

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7011

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
JEFF TRACHTMAN, et al., :

Plaintiffs-Appellants, :

-against- :

IRVING ANKER, etc., et al., :

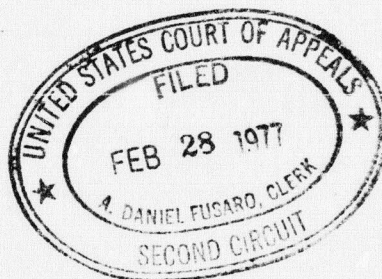
Defendants-Appellants. :

DOCKET NUMBER

77-7011

-----X
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK

APPENDIX



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PLAINTIFFS

JEFF TRACHTMAN, individually and by his
father, GILBERT M. TRACHTMAN

DEFENDANTS

(AMENDED- 10-11-76)

IRVING ANKER, individually and in his
capacity as Chancellor of New York City
Public Schools, SAMFORD CELERENTER,
individually and as Administrator of
Student Affairs, Office of Student Affairs,
Office of High Schools, Board of Education
of the City of New York; GASPAR FABRICANTE,
individually and as Principal of Stuyvesant
High School, and JAMES RECAN, ISRAIAH
ROBINSON, STEPHAN AIELLO, AMELIA ASHE,
JOSEPH BARKAN, and ROBERT CHRISTEN,
constituting THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Vio. of Civil Rights First and Fourteenth Amendments ^{CAUSE} 28 U.S.C. 1343

rw

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(Robert Deutsch- Ass't C.C.)

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DATE	NR.	PROCEEDINGS
03-26-76	(1)	Filed complaint issued summons.
09-21-76	(2)	Filed Pltffs' ^{affidavit and} Order to Show Cause for preliminary injunction and declaratory judgment. RET Sept. 23rd, 1976 at 10AM in Room 1105. MOTLEY, J
09-21-76	(3)	Filed Pltff's Memorandum in support of application for order granting preliminary and permanent injunction and declaratory judgment.
10-14-76	(4)	Filed Amended Complaint.
10-26-76	(5)	Filed ANSWER of defts. to the complaint. (W.B.R.)
11-12-76	(6)	Filed summons and return- served the following: Gaspar Fabricante- UNEXECUTED- 11-2-76 Irving Anker by Mildred Goldstein on 8-31-76 N.Y.C. Board of "ducation by David Weiss on 8-31-76 Sanford Gelernter, personally, on 8-31-76
11-12-76	(7)	Filed Amended Summons and return- served the following: Joseph G. "arkan by David Weiss on 10-19-76 Am elia H. Ashe by David Weiss on 10-19-76 Dr. Robert Christen by David Weiss on 10-19-76 Stephan R. Aiello by David Weiss on 10-19-76 James F. Regan by David Weiss on 10-19-76 Isaiah Robinson by David Weiss on 10-19-76
11-18-76	(8)	Filed affdvt. of deft. "anford Gelernter dated 11-16-76
11-18-76	(9)	Filed affdvt. of Jacob Abramson, a School Research Ass't in the office of Educational Evaluation of the Bd. of Education, dated 11-16-76
11-18-76	(10)	Filed affdvt. of Anthony J. Polemeni, Director of the Office of "ducational Evaluation of the Bd. of Education, dated 11-16-76
11-18-76	(11)	Filed defts' supplementary affdvt. of Ver S. Paster in opposition to application for declaratory and injunctive relief.
11-18-76	(12)	Filed defts' affdvt. of Aaron H. Esman, M.D. in opposition to application for declaratory and injunctive relief.
11-18-76	(13)	Filed defts' affdvt. of Florence Halpern, Ph.D in opposition to application for declaratory and injunctive relief.
11-18-76	(14)	Filed defts' memorandum of law in opposition to application for injunctive and declaratory relief.
11-22-76	(15)	Filed pltff's affdvt. of Gilbert M. Trachtman in support of application.
12-01-76	(16)	Filed defts' reply affdvt of Harold Siegel, secretary to the Bd. of "ducation of the City of N.Y.
12-16-76	(17)	Filed Memorandum-Opinion #45442-- for the reasons stated, the court holds that defts. violated the First Amendment rights of the pltff student when they refused permission to distribute the questionnaire to upper class students. the court further holds that defts. cannot refuse permission to publish the results in the school paper. The parties should, therefore, agree on a plan by which to distribute, collect and publish the survey in light of the elements as indicated. MOTLEY, J. (m/n)
12-16-76	(18)	Filed Order-- that in light of the memorandum-opinion filed on this date, the parties shall agree on a plan by which to distribute and collect pltffs' sexual attitudes survey which incorporates the elements as indicated- and that defts. are permanently enjoined from prohibiting the publication of the results of the survey in the Voice . So ordered- MOTLEY, J. (m/n)
12-30-76	(19)	Filed defts' notice of appeal to the USCA from the order entered on 12-16-76 which order that the parties shall agree on a plan by which to distribute and coll pltffs' sexual attitudes survey which incorporates the elements as indicated. Copy to: Berger, Karmar & Sugarman, Esqs. Ent. 12-30-76

(CONT'D - 16-#3)

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF

JEFF. TRACHTMAN, etc. et ano.

DEFENDANT

IRVING ANKER, etc. et al

DOCKET NO 76-3845

PAGE 3 OF 3 PAGES

DATE	NR.	PROCEEDINGS
01-03-77	(20)	Filed Order-- that this court's order of 12-15-76 be, and hereby is, stayed pending appeal, on condition the appeal is promptly affected. So ordered- MOTLEY, J. (m/n)
01-11-77	(21)	Filed pltffs' cross-notice of appeal to USCA from so much of the order and the memorandum opinion entered on 12-16-76 which limits pltff's distribution and collection of its sexual attitude survey to students at Stuyvesant H.S. who are 14 years of age or older.. Copy to: Corporation Counsel, City of N.Y. Entered 01-11-77.
01-24-77	(22)	Filed Notice that original record has been certified and transmitted to USCA 2nd Circuit this day.

DC-111A REV. (1/75)

000003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFF TRACHTMAN, Individually and by :
his father, GILBERT M. TRACHTMAN, :

Plaintiffs, :
:

-against- :
:

76 CIV. 3845

IRVING ANKER, Individually and in his :
capacity as Chancellor of New York :
City Public Schools, et al., :

Defendants. :

APPEARANCES

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CONSTANCE BAKER MOTLEY, D. J.

000004

MEMORANDUM OPINION

Plaintiffs are a student at Stuyvesant High School (Stuyvesant) in New York City and his father. Student plaintiff Jeff Trachtman, in his capacity as editor-in-chief of the school newspaper, the Voice, sought permission from the defendant principal at Stuyvesant and the New York City Board of Education (the Board) to distribute a questionnaire designed to measure the sexual attitudes of his fellow Stuyvesant students. Permission was denied.

Plaintiff now sues for an injunction which would 1) prevent defendants from prohibiting the distribution of the questionnaire throughout the school and 2) prevent defendants from prohibiting publication of an interpretation of the responses to the questionnaire in the Voice.^{1/}

The question is whether defendants deprived the student plaintiff of his First Amendment right to freedom of expression when they refused him permission to distribute his questionnaire.^{2/} The court holds that defendants violated the First Amendment rights of the plaintiff student when they refused permission to distribute the questionnaire to upper class students. The court further holds that

defendants cannot refuse permission to publish the results in the school newspaper.

The questionnaire (which is attached hereto as an appendix) is composed of twenty five questions requiring rather personal and frank information about the student's sexual attitudes, preferences, knowledge and experience. Plaintiff seeks to distribute the questionnaire on a random basis. He would then tabulate and interpret the responses for publication in the school newspaper. The identities of those who answer the questionnaire are to be kept strictly confidential. The questionnaire includes a proposed cover letter which describes the nature of the inquiry. It also suggests to the student that if he or she finds the questionnaire disturbing, it should not be answered.

In denying plaintiff permission to distribute the questionnaire, the Board acknowledged the constitutional rights of the students, but stated that student research, especially that which deals with a subject as sensitive as a student's sexual attitudes, must comply with the strict standards contained in a handbook entitled, "Cooperative Procedures Governing Research Proposals, — Handbook for Research Applicants." In short, the contention of the Board is that since the questionnaire did not

meet these standards and since only professional researchers could handle such a subject with the proper sensitivity, the student request to conduct this study must be denied. It also claimed that some students would suffer irreparable psychological damage upon being confronted with the questionnaire and the necessity to answer certain of the questions.

Plaintiff denies that the study, as planned, could result in harm to some students. He claims that the handbook applies to outside researchers, not expressive activities conducted by the students themselves.

The basic principles governing First Amendment rights of high school students were enunciated by the Supreme Court in Tinker v. Des Moines Independent Community School District, 393 U. S. 503 (1969). There the Court said: "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. In can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." 393 U. S. at 506. Continuing, the Court noted that it had "repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct

in the schools." 393 U. S. at 507. It also ruled that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." 393 U. S. at 508. Before abridging the First Amendment rights of students, the school authorities must show that restrictions on the expressive activity are "necessary to avoid material and substantial interference with schoolwork or discipline. . ." 393 U. S. at 511. The burden of proving that such restrictions are necessary is on the school authorities. Katz v. McAulay, 438 F.2d 1058 (2d Cir. 1971), cert. denied, 405 U. S. 933 (1972).

Although students do not shed their constitutional rights upon entering school, Tinker and subsequent cases make it clear that these rights must be balanced against the duty of the school authorities to maintain discipline and to provide an atmosphere which is conducive to learning. First Amendment rights must be applied in the context within which they are asserted, Healy v. James, 408 U. S. 169, 180 (1972), and these rights are not necessarily co-extensive with those of adults. Baughman v. Freienmuth, 478 F.2d 1345, 1351 (4th Cir. 1973); Shanley v. Northeast Ind. School Dist., 462 F.2d 960, 969 (5th Cir. 1972).

The principles enunciated above have been formulated mainly in the context of student publications and political activities and their potential disruptive effects. The question in this case, however, is markedly different: To what extent will the distribution of a questionnaire dealing with sexual attitudes infringe on the rights of the students and their parents, and what is the potential for psychological harm as a result of the distribution? Tinker did not deal with this specific question but focused on the "physically" disruptive effects of students wearing black armbands in opposition to the Viet Nam War. However, Tinker did not delineate the circumstances under which the school authorities may proscribe students' First Amendment rights. If defendants can prove there is a strong possibility the distribution of the questionnaire would result in significant psychological harm to members of Stuyvesant High School, then the distribution could be denied. See Shanley v. Northeast Ind. School Dist., 462 F.2d 960, 971 (5th Cir. 1972) (the standard is the "reasonableness" of the restrictions).

At least two cases have dealt with the problem of whether high school students could distribute material dealing with sexual issues. The distribution was allowed

in both instances. Bayer v. Kinzler, 383 F.Supp. 1164 (E.D.N.Y. 1974), aff'd, 515 F.2d 504 (1975); Burford v. Board of Education of the Baldwin Public Schools, et al., Index No. 8482/72 (Sup. Ct. Nassau Co., decided August 16, 1972). This court does not, however, consider either of these cases to have precedential value. Neither dealt with the issue whether a student questionnaire, eliciting very personal and frank information, could have detrimental effects on high school students.

// The thrust of defendants' evidence is that serious harm could result if certain students are confronted with particular questions in the survey. It is argued that many high school students are only beginning to develop sexual preferences and that their "identities" are in a state of rapid development. To be asked such pointed questions at this stage in their lives would force those students who are emotionally immature to confront difficult issues prematurely. The result, defendants claim, is that certain students may become quite apprehensive or even unstable as a result of answering this questionnaire. The court finds that this reasoning applies only to students as young as 13 and 14 years of age. Defendants, therefore, did not violate the Constitution in prohibiting distribution at this level. (Memo. on Op. in p. 7)

The court does not have the luxury of simply granting or denying the relief requested by plaintiff. When students' First Amendments rights are asserted, the reasonable restrictions which are imposed must be the minimum necessary to protect the need for discipline and to protect the interests of the students. Grayned v. City of Rockford, 408 U. S. 104, 116-117 (1972). The relief must be carefully tailored in light of the circumstances of each individual case.

"Free speech under the First Amendment, though available to juveniles and high school students as well as adults, is not absolute[,] and the extent of its application may properly take into consideration the age or maturity of those to whom it is addressed." Quarterman v. Byrd, 453 F.2d 54, 57 (4th Cir. 1971).

"The court finds defendants' analysis of possible harm to be unconvincing with respect to the junior and senior students. In fact, it appears that such a questionnaire would have substantial beneficial effects. It cannot be denied that New York City high school students are today confronted with an avalanche of explicit sexual information and misinformation. Many a newstand in the midtown area

is the functional equivalent of a pornographic shop. Stuyvesant High School is located on the lower east side of Manhattan. Courses in sex education are taught in the school. Information about sex — both correct and incorrect — is imparted daily on television, on radio and via the rash of new sex magazines about town. With a wry blend of hyperbole and truth, one of plaintiff's affiants asserts that "any youngster sufficiently fragile to suffer serious anxiety or depression upon reading questions which (s)he may ignore with impunity or respond to anonymously, is a youngster too fragile to have survived the trip from home to school." It seems to the court that the distribution of this questionnaire, which is soberly and responsibly written, is an acceptable way in which to have students present sexual issues to other students — free from the debasement of commercialism and sensationalism — and guided by interested parents.

Defendants are concerned that harm will result if the students are directly confronted with their own attitudes towards sexual issues (and they certainly will be so confronted if they answer this questionnaire). But it seems that the result of answering this survey is more likely to produce exactly the opposite effect. Upper class students who are sexually immature or who have certain conflicts would be more likely to resolve these problems if

they are faced, as a result of peer pressure, with the basic questions, and if they are simultaneously made aware of the fact that many other students have similar problems. The distribution of the questionnaire and the publication of the results in the Voice will make it clear that the questions asked are the concerns of many, and that the problems which a student may face are not unique to himself. ^{3/} "

In addition to this court's finding that, with respect to the older students, the psychological benefits of the survey far outweigh any harm, there are also significant educational benefits to be gained from this student project. Many of defendants' affiants objected to the unscientific nature of the survey claiming that the questions are a hodge-podge and that the results would prove nothing. This argument is beside the point. The value to the scientific community is not relevant. What is important here is that a number of students took the initiative to research and design a survey with the help of adults. This type of independent investigation should be encouraged and applauded, for an integral goal of our educational system is to stimulate inquiry as well as to impart knowledge. " The Second Circuit has stated:

"A public school is undoubtedly a 'marketplace of ideas.' Early involvement in social comment and debate is a good method for future generations of adults to learn intelligent involvement."

Eisner v. Stamford Board of Education,
440 F.2d 803, 807 (1971).

The Seventh Circuit has expressed similar sentiments:

"While recognizing the need of effective discipline in operating schools, the law requires that the school rules be related to the state interest in the production of well-trained intellects with constructive critical stances, lest students' imaginations, intellects and wills be unduly stifled or chilled." Scoville v. Board of Education,
425 F.2d 10, 14 (1970), cert. denied, 400 U. S. 826 (1970).

This court rejects defendants' argument that, since the study does not conform with the published research handbook of the Board, the student study may be restrained. First, these guidelines, by their own terms, apply only to certain "qualified agencies" and to "candidates

for graduate degrees." They were not designed to apply to students. They can not now be brought out of the file and used as a rationale to deny students the opportunity to conduct their own research. Second, while defendants can ban the distribution of literature without relying on an existing "rule", Eisner v. Stamford Board of Education, 440 F.2d 803, 808 n.4 (2d Cir. 1971), any such rule must be strictly tailored to protect the constitutional rights of the students. Eisner, supra. Unquestionably, the Board can strictly control the in-school research activities of outsiders. Ellis v. Dixon, 349 U. S. 458 (1955); cf. Katz v. McAulay, 438 F.2d 1058 (2d Cir. 1971), cert. denied, 405 U. S. 933 (1972). But the Board's guidelines are deficient in at least two respects when applied to students. The court sees no reason why students who seek to exercise First Amendment rights need be burdened by the requirement that any survey or research that they carry out conform to certain standards and must employ the proper research methodology. Such a standard would frustrate even the brightest and most curious of students. These students would be limited to designing a proper type of study after endless hours of consultation with someone who is skilled in the complicated area of scientific research.

Another requirement which would impose an undue burden on this type of student expression is the requirement of parental consent before a student is allowed to answer the questionnaire. This requirement would seriously complicate — and perhaps frustrate — the research project of the student plaintiff. Consent forms would have to be distributed, returned and tabulated; curious students may be tempted to forge "stubborn" parents' signatures; the paperwork could lamentably reach adult proportions. The court recognizes that parents have an interest in knowing — and sometimes controlling — what their children learn in school. The court has a responsibility to weigh these concerns when deciding whether certain expressive activities of high school students should be protected when objections are raised by school authorities. The court has not forgotten the interests of the children's parents. However, in view of the arguments already noted and the fact that this research project — though dealing with a very sensitive topic — was designed and written in a highly responsible manner; and in view of the fact that the distribution of the questionnaire must be accomplished in accord with the safeguards described below, this court holds that parental consent is not required under the circumstances of this case before a child in the upper grades can answer plaintiff's survey.

Defendants suggest that the students are free to distribute the questionnaire off of the school grounds. This alternative is not acceptable to the students because it would defeat their attempt to collect a random sample of responses. Distribution and subsequent collection may become too disorganized to achieve any useful results. The court's objection to this alternative is that the various safeguards - which defendants understandably insist are necessary - would be impossible to apply in such a situation. (See infra, pp.16-17). Cf. Healy v. James, 408 U. S. 169, 183 (1972).

While the distribution of the survey to students in the 11th and 12th grades should be allowed, the court is not persuaded that younger children will not grow anxious when answering some of the questions on the survey. It also appears that some of these children, who are as young as 13 and 14 years, may be too young and immature to be exposed to a comparison of their sexual attitudes and experience with that of their peers. In view of the numerous affidavits of defendants, we cannot confidently conclude -- as we did in the case of the older students -- that the distribution of this survey will not result in some significant harm to the youngest children at Stuyvesant. The school authorities certainly need not wait until the harm has occurred before restricting First Amendment rights; they

can take reasonable precautions to prevent the possibility of harm. Butts v. Dallas Ind. School Dist., 436 F.2d 728, 731 (5th Cir. 1971). The Board, therefore, may continue to deny plaintiffs permission to distribute the questionnaire to the 9th and 10th grade students.

The distribution of the survey should be allowed in grades 11 and 12, but certain safeguards requested by the school authorities should definitely guide this distribution. The court feels that the details of the distribution should be worked out through negotiations of the interested parties. The court is quite unfamiliar with the special needs and structure of Stuyvesant. And the courts, as a general rule, should minimize their involvement in the day to day business of our schools. Healy v. James, 408 U. S. 169, 195 (1972) (Chief Justice Burger concurring); Shanley v. Northeast Ind. School District, 462 F.2d 960, 967 (5th Cir. 1972).

The inexperience of the court is only one reason why it should limit its involvement in Stuyvesant's business. The students and the school authorities should be encouraged to come to mutual agreements free of the outside pressure of the legal system. There should be no losers or winners when students and school officials disagree for, presumably, all concerned are interested in promoting the common goal of educating our children. The relationship should not become

adversarial. It should be one of accommodation and understanding. See, e.g., Goss v. Lopez, 419 U. S. 565, 593-4 (1975) (Mr. Justice Powell dissenting).

The parties should, therefore, agree on a plan by which to distribute, collect and publish the survey in light of the following elements:

1. The negotiators shall be chosen by the respective parties and shall include a student representative, a parent representative chosen by the students, the principal (or his representative) of Stuyvesant, and a representative of the Board of Education (who may delegate his authority to the principal).

2. The negotiators shall select a member of the Stuyvesant faculty or administration - acceptable to the students - who will take the responsibility for seeing that the distribution, collection and publication of the survey are performed in accordance with the final plan.

3. Provision should be made for both confidential and public discussion groups for students who would like to talk with school personnel after the distribution of the survey and the publication of the results in the Voice.

4. A written description of this plan (if a plan is agreed upon) shall be submitted to the court on or before December 30, 1976.

5. A hearing on the proposed plan will be held on January 5, 1977. It is to be attended by those who negotiated this agreement as well as the parties' counsel. If no agreement has previously been reached, the court will draw its own plan. If an acceptable plan has previously been submitted, this hearing may be cancelled.

Dated: New York, New York

December 15, 1976



CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. A hearing on plaintiff's motion for a preliminary injunction was commenced on September 23, 1976. At that time the court decided to consolidate the motion for preliminary injunction with the trial on the merits. Rule 65(a)(2), Fed. R. Civ. P. Thereafter, a trial was scheduled to hear evidence on the question whether distribution of the questionnaire could result in psychological harm to some of the students. The parties later agreed that the court should decide the possible harm question on the basis of affidavits submitted by both sides. The court has now considered those affidavits and the evidence adduced on the hearing of the motion for preliminary injunction and now makes its findings of fact and conclusions of law as required by Rule 52, Fed. R. Civ. P.

At this same hearing, the defendants waived their claim for damages of \$1000 as to each defendant.

2. The complaint also asked that defendants be enjoined from "employing an unconstitutional system of prior review of literature" This point was neither argued nor briefed and the court, therefore, does not reach this issue.

FOOTNOTES, cont'd

3.

It is noteworthy that Stuyvesant is a school for intellectually gifted students, who are more likely to respond to the questionnaire with a higher degree of maturity than other students.

"SEXUALITY IN STUYVESANT"

Robert Marks

Mr. Fabbriante, Principal.

Mr. Pearlman, Faculty Advisor

Dear Participant,

The following is a survey for an article being written for the Stuyvesant Voice. The topic is "Sexuality in Stuyvesant". In this case, "sexuality" covers a wide area from human equality to sexual education.

Sexuality plays a very important role in society-far more important than many people realize. It affects every human encounter, every interplay and its effect is no weaker in Stuyvesant than anywhere else. With the help of this survey, I will attempt to draw some conclusions and interpretations concerning the influence of sexuality on the Stuyvesant community.

The questions asked are direct and personal. The survey is random and completely confidential. No one will know who has filled out your specific survey except you. Because of the strict precautions that are being taken to make all answers confidential, I am hoping that you will be as honest, open and responsible as possible when answering the questions. You are not required to answer any of the questions and if you feel particularly uncomfortable-don't push yourself. Any additional information that you feel is pertinent is more than welcome and extra space is provided for these comments.

The article itself, is a personal study of attitudes and ideas. It will contain some statistics, but only enough to demonstrate similarities and differences among the surveyed Stuyvesantians. But, to a greater extent, it will be a human article expressing human feelings on an underplayed and extremely important part of our lives.

Please consider your answers carefully. This survey comprises the bulk of the research for the article. honesty and responsibility cannot be stressed enough.

Your cooperation is greatly appreciated. Thank you.

Sincerely yours,

Robert A. Marks

Robert A. Marks

Exhibit "A"

000023

1) Sex: _____

2) Grade: _____

3) What is your definition of sexuality?

4) Is the atmosphere different (in respect to sexuality) at Stuyvesant as opposed to your old school? Drastically _____ Little _____ Not at all _____.

Did you have trouble adjusting? Greatly _____ Somewhat _____ Not at all _____.

Comments?

5) Does sexual profanity offend you? Yes _____ No _____.

Comments?

6) What are your attitudes towards the traditional dating situation? eg. Only boy can ask girl out? Boy pays for date?

7) Are men equal to women? Totally _____ In most cases _____, Never _____.

Comments?

8) To what degree should unisexuality be carried? (It has been haircuts and clothing up to now, it could one day be bathrooms. How do you feel?)

9) Do sexual stereotypes exist? If yes, which do you feel most strongly about?

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Can you think of any alternatives?

11) Do you approve of pre-marital sexual relations?

Greatly disapprove _____ Some reservations _____ Approve _____

Comments?

12) Do you approve of contraception?

Greatly disapprove _____ Some reservations _____ Approve _____

Comments?

13) What types of contraception are you aware of? What types would you use?

14) How would you react to homosexuality if it occurred among your peers?

Extremely uncomfortable _____ Uncomfortable _____ Slightly Uncomfortable _____
Comfortable _____

Comments?

15) Do you consider yourself a heterosexual _____, homosexual _____ or a bisexual _____?

Comments?

16) What are your feelings on homosexuality? Bisexuality?

17) Would you object to a homosexual or a bisexual in a position of authority?

Greatly _____ Somewhat _____ Not at all _____

Comments?

18) What are your feelings on the topic of masturbation? Can it hurt the body? the mind?

000025

20) What is the extent of your sexual experience? Was this experience (whatever it may be) what you expected it to be?

21) Do you feel an emotional relationship must coexist with a sexual one? (or vis versa)
Yes _____ No _____.

Comments?

22) Where did most of your sexual education take place?
In my home _____ In school _____ Among my peers _____ Other _____.

Comments?

23) Do you feel your views on sexuality coincide with those of your parents? Do you get along with your parents? In what ways do their opinions agree or differ with yours?

24) Do you feel that your sexual education (emotional and factual) is complete? Are there or have there been deficiencies? Is it the school's job to correct this deficiency? Are you satisfied with the situation?

25) Do you feel a change to more liberal attitudes in respect to the topics discussed in this questionnaire, on the part of the society, would be good or bad? Why?

Comments on other areas not mentioned in this questionnaire would be greatly appreciated. You may also expand on any of the questions that were included. Finally, please include some feedback on the questionnaire itself.
Thank you for your cooperation.

000028

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 76 Civ 3845

JEFF TRACHTMAN, Individually and by
his father, GILBERT M. TRACHTMAN,

Plaintiff s,

v.

IRVING ANKER, individually and in his capacity as Chancellor of New York City Public Schools, SANFORD GELERNTER, individually and as Administrator of Student Affairs, Office of Student Affairs, Office of High Schools, Board of Education of the City of New York; GASPAR FABRICANTE, individually and as Principal of Stuyvesant High School and JAMES REGAN, ISAAH ROBINSON, ^{Defendant} STEPHAN AIELLO, AMELIA ASHE, JOSEPH BARKAN, and ROBERT CHRISTEN, constituting THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

To the above named Defendants :
You are hereby summoned and required to serve upon

MARTIN M. BERGER.

AMENDED
SUMMONS

Defendants.

plaintiff's attorney , whose address is 377 Broadway, New York, New York 10013

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/ Raymond F. Dwyer
Clerk of Court.
/ M C Berman
Deputy Clerk.

Date: October 17, 1976

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____, 19____, I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel ----- \$ -----

Service -----

United States Marshal

By -----
Deputy United States Marshal

Subscribed and sworn to before me, a

day of _____, 19____

this

[SEAL]

Note: Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. 76 Civ 3845

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, ETC.,
v. Plaintiffs,
IRVING ANKER, et. al.,
Defendants.

AMENDED
SUMMONS IN CIVIL ACTION

Returnable not later than _____ days
after service.

MARTIN M. BERGER
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, individually and by
his father, GILBERT M. TRACHTMAN,

76 Civ 3845

Plaintiffs,

- against -

AMENDED COMPLAINT

IRVING ANKER, individually and in his
capacity as Chancellor of New York City
Public Schools, SANFORD GELERNTER,
individually and as Administrator of
Student Affairs, Office of Student Affairs,
Office of High Schools, Board of Education
of the City of New York; GASPAR FABRICANTE,
individually and as Principal of Stuyvesant
High School, and JAMES REGAN, ISAIAH
ROBINSON, STEPHAN AIELLO, AMELIA ASHE,
JOSEPH BARKAN, and ROBERT CHRISTEN,
constituting THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Defendants.

I. JURISDICTION

1. The jurisdiction of this Court is invoked under
Title 28, United States Code, Sections 1343 and 2201, et seq.,
this suit being authorized by Title 42, United States Code,
Section 1983. This is an action for a declaratory judgment
and an injunction to prevent the further deprivation under color
of state law, statute, ordinance, regulation, custom or usage

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of rights, privileges and immunities secured by the First Amendment to the Constitution of the United States, as made applicable to the States by the Fourteenth Amendment, guaranteeing to all persons freedom of speech and the press, and the Fourteenth Amendment, guaranteeing to all persons the equal protection of the laws and due process of law.

II. Parties.

2. Plaintiff Jeff Trachtman is a student at Stuyvesant High School, in the City, County and State of New York and, being a minor under eighteen years of age he brings action through his father, Gilbert M. Trachtmen.

3. Robert A. Marks is a student at Stuyvesant High School, City, County and State of New York and,

4. Defendant Irving Anker, is Chancellor of The New York City Public School System and is employed by the defendant, the Board of Education of The City of New York, as the administrative officer charged with over-all responsibility to implement the policies of defendant, Board of Education.

5. Sanford Gelernter is an agent or employee of the defendant. Board of Education, whose responsibilities include, upon information and belief, administering student affairs in the high schools under the jurisdiction of the defendant Board of Education. Each and every action of the defendant Gelernter, and his agents, as is herein alleged, was in his capacity as an agent or employee of the defendant Board.

6. Gaspar Fabricante is the principal of Stuyvesant High School, a high school under supervision and control of the defendant Board of Education, supported entirely by public funds, and whose responsibilities include the administration of Stuyvesant High School. Each and every action of the defendant Fabricante and his agents hereinafter alleged was in his capacity as an agent or employee of the Board.

7. Defendants James Regan, Isaiah Robinson, Stephan Aiello, Amelia Ashe, Joseph Barkan, and Robert Christen constitute the Board of Education of the City of New York (hereinafter "Board") which is a State agency charged with the overall responsibility for the operation and administration of the public schools of the City of New York.

III. INCIDENTS AT ISSUE

8. Plaintiff Jeff Trachtman is editor-in-chief and Robert A. Marks is an editorial staff member of a Stuyvesant High School monthly periodical entitled "The Stuyvesant Voice", comprising articles, columns and news stories by students at the high

school.

9. In preparation for an article to appear in the March 1976, issue of Stuyvesant Voice, Robert Marks prepared a questionnaire to be utilized in a survey to be conducted among students at Stuyvesant High School to determine student attitudes on "Sexuality In Stuyvesant". The survey was to be conducted by distributing randomly to students at the high school copies of the questionnaire and requesting those who wish to complete the questionnaire to return the same without identification. It was intended that the conclusions calculated from the returned questionnaires would then be included in an article to be published in The Stuyvesant Voice.

10. Request was made of defendant Fabbriante for approval of the planned dissemination of the questionnaire randomly among the students at Stuyvesant High School. Defendant Fabbriante refused to give approval and referred plaintiffs to seek such approval from defendant Board of Education.

11. Plaintiffs thereupon by letter inquired of defendant Board's Office of High School Affairs - Office of Student Affairs for permission to conduct this survey. Copies of their written submission to their faculty advisor and defendant Fabbriante including a draft of a letter to be circulated with the questionnaire among the students at Stuyvesant High School requesting

their participation and a copy of the questionnaire was included.

12. By letter dated December 17, 1975, defendant Gelernter responded, flatly stated that "High School students may not conduct a survey on sexuality." Permission to conduct the survey was not granted.

13. On December 24, 1975, plaintiffs requested defendant Anker, to review the denial permission by defendant Gelernter.

14. When no response was made by defendant Anker an appeal from defendant Gelernter's determination was made by the plaintiffs by way of a letter of January 13, 1976, to Harold Siegel, secretary of defendant Board. The Board following further communication from the plaintiffs and their representatives and absent any determination by defendant Anker proceeded to consider the matter (without hearing, or other submission) by plaintiffs, and on February 24, 1976, affirmed the denial of permission to conduct the survey.

IV. CAUSES OF ACTION

15. The program contemplated and proposed by the plaintiff to prepare and disseminate among students of Stuyvesant High School a questionnaire and compiling the results of the survey for written comment and interpretation in the student publication is protected by the First Amendment as made applicable to the States by the Fourteenth Amendment to the United States Constitution. Defendant's prohibition of the distribution of questionnaire and therefore of the publication of its results is violative of plaintiffs' First Amendment rights in that it suppresses the right to peacefully communicate ideas. It is violative of the First Amendment rights of those students whose anonymity is protected by plaintiffs' proposal, to express and communicate ideas even anonymously. The proposed questionnaire, the program for its distribution and interpretation of the results from the respondents thereto makes no appeal at all to prurient, shameful or morbid interests of high school students. The planned survey and publication of the results thereof would not be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for high school students. The publication of the results of the survey in the student periodical "The Stuyvesant Voice" has significant redeeming social importance for high school students. The proposed

questionnaire to be received anonymously by students in the high school and completed by such students only if they desired to, and to be returned, with anonymity guaranteed does not interfere with the rights of other students to be secure and to be let alone. The speech and action contemplated by the plaintiffs do not intrude upon the work of the school or the rights of other students.

16. Plaintiff and members of the class that plaintiffs represent have suffered and are now suffering, and will continue to suffer irreparable injury by virtue of the acts, policies and practices of the defendants and their agents, as set forth above. Plaintiffs have no adequate or complete remedy at law to address these violations of their constitutional rights, and this suit for injunction and declaratory judgment is their only means of securing complete and adequate relief.

WHEREFORE, plaintiffs request that this Court:

(a) Declare that plaintiffs and other similarly situated be allowed to distribute to high school students on Stuyvesant High School property literature constituting a proposed questionnaire respecting sexual opinions of students at Stuyvesant High School and related communications;

(b) Declare that plaintiffs and other similarly situated may publish conclusions, results and interpretations from data accumulated from responses to the questionnaire in the Stuyvesant

Voice;

(c) Grant plaintiffs and other similarly situated a preliminary hearing and upon conclusion of the hearing, a permanent injunction ordering defendants, their agents, servants and employees and the persons in concert with them who obtained notice of the order:

1. To permit distribution of non-obscene and non-libelous literature including questionnaires directed to students at Stuyvesant High School, on school property, so long as such distribution does not substantially disrupt normal school activities.

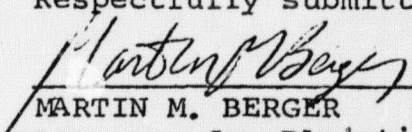
2. Cease the practice of employing an unconstitutional system of prior review of literature including proposed questionnaires directed to student body at Stuyvesant High School, which plaintiffs wish to distribute on school property;

3. To permit publication of conclusions, interpretations and results that may be garnered from the data accumulated in connection with responses to the proposed questionnaires;

(d) Grant plaintiffs nominal, compensatory and punitive damages against each of the defendants in the amount of \$1,000.

(e) Grant such other and further relief as to the Court may seem just and proper.

Respectfully submitted,


MARTIN M. BERGER
Attorney for Plaintiffs
(Cooperating Attorney - New
York Civil Liberties Union)
377 Broadway
New York, New York 10013

NEW YORK, COUNTY OF

ss.:

igned, an attorney admitted to practice in the courts of New York State,

Verification
By Attorney

certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's
Affirmation

shows: deponent is

the attorney(s) of record for
in the within action; deponent has read the foregoing
and knows the contents thereof; the same is

true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief,
and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

Gilbert M. Trachtman
the plaintiff

being duly sworn, deposes and says: deponent is
in the within action; deponent has read

Check Applicable Box

☐ Individual
Verification

the foregoing Complaint
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
to those matters deponent believes it to be true.

☐ Corporate
Verification

the of
a corporation,
in the within action; deponent has read the
and knows the contents thereof; and the same
is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and
belief, and as to those matters deponent believes it to be true. This verification is made by deponent because
is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

July 15 1976

MELVIN GOLDSTEIN
Notary Public, State of New York
No. 30-1494609
Qualified in Nassau County
Expires March 1977

The name signed must be printed beneath

GILBERT M. TRACHTMAN

ss.:

being duly sworn, deposes and says: deponent is not a party to the action,

is over 18 years of age and resides at

☐ Affidavit
of Service
By Mail

On 19 deponent served the within
attorney(s) for upon in this action, at

the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — post office — official
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box

☐ Affidavit
of Personal
Service

On 19 at upon

herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on

19

The name signed must be printed beneath

00003

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFF TRACHTMAN, Individually and By His Father, :
Gilbert M. Trachtman, on Behalf of JEFF :
TRACHTMAN, :

Plaintiff, :

-against- : ANSWER

IRVING ANKER, Individually and in His Capacity :
as Chancellor of New York City Public Schools, : 76 Civ 3845
SANFORD GELERNTER, Individually, and as : (CBM)
Administrator of Student Affairs, Office of :
Student Affairs, Office of High Schools, Board :
of Education of the City of New York; GASPAR :
FABRICANTE, Individually, and as Principal of :
Stuyvesant high Vchool, and; THE BOARD OF :
EDUCATION OF THE CITY OF NEW YORK, :
Defendants. :

-----X
Respondents, by their attorney W. BERNARD RICHLAND,
Corporation Counsel, answering the complaint

1. Deny each and every allegation contained in paragraphs "3", "15" and "16" of the complaint.
 2. Deny each and every allegation contained in paragraph "7" of the complaint and respectfully refer this Court to the Education Law for a full and complete description of the nature and responsibilities of Defendant Board of Education of the City of New York.
 3. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "8" and "9" of the complaint.
- AS AND FOR A FIRST SEPARATE AND
COMPLETE DEFENSE, DEFENDANTS
ALLEGE:
4. This Court lacks jurisdiction over the subject matter of this action.

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AS AND FOR A SECOND SEPARATE AND
COMPLETE DEFENSE, DEFENDANTS
ALLEGE:

5. This Court lacks jurisdiction over defendant
Board of Education.

AS AND FOR A THIRD SEPARATE AND
COMPLETE DEFENSE, DEFENDANTS
ALLEGE:

6. The complaint fails to state facts sufficient
to constitute a claim upon which relief can be granted.

AS AND FOR A FOURTH SEPARATE AND
COMPLETE DEFENSE, DEFENDANTS
ALLEGE:

7. The actions of defendants were taken to
protect the interests of the children. The defendants have
not only a right but the obligation to protect those children.
The decision to prevent distribution of the survey was
proper and lawful in all respects and in no way violated
plaintiffs' rights.

WHEREFORE, defendants demand judgment, costs
and dismissal of the complaint.

Dated: New York, New York .
October 19, 1976

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants

By ROBERT DEUTSCH
ROBERT DEUTSCH
Assistant Corporation Counsel
Municipal Building
New York, N.Y. 10007
Tel. (212) 566-3927/2192

000040

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, etc.

Plaintiff,

-against-

IRVING ANKER etc. et al

Defendants

ANSWER

W. BERNARD RICHLAND
Corporation Counsel,

Attorney for Defendants

Municipal Building,
566-3927/2192 New York, N. Y. 10007

Due and timely service of a copy of the
within
is hereby admitted.

New York, 19.....

Attorney for

To

....., Esq.,
Attorney for

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFF TRACHTMAN, Individually and By His Father,
Gilbert M. Trachtman, on Behalf of JEFF
TRACHTMAN,

Plaintiff,

-against-

IRVING ANKER, Individually and in His Capacity
as Chancellor of New York City Public Schools,
SANFORD GELERNTER, Individually, and as
Administrator of Student Affairs, Office of
Student Affairs, Office of High Schools, Board
of Education of the City of New York; GASPAR
FABRICANTE, Individually, and as Principal of
Stuyvesant High School, and; THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

CIVIL ACTION
NO. 76 Civ. 3845

:
ORDER TO SHOW
CAUSE FOR
: PRELIMINARY
INJUNCTION AND
DECLARATORY
: JUDGMENT

-----X
Upon the affidavit of Martin M. Berger, sworn to the
9th day of September, 1976, and the exhibits annexed thereto,
and upon the summons and complaint and all the proceedings
heretofore had herein, it is hereby

ORDERED that the defendants show cause at a Term of this
Court, Room 1105, at the United States Courthouse, Foley Square,
New York, New York, at 10:00 A.M. on September 23, 1976, pursuant
to Rules 56, 58, and 65 of the Federal Rules of Civil Procedure
and 28 U.S.C. 2201, declaring the rights of the parties why an
order restraining the defendants preliminarily and permanently

from causing any restraint of the distribution to the students of Stuyvesant High School of a questionnaire, substantially in the form appended to the moving affidavit, and from preventing the publication of conclusions, results and interpretations from the data collected in responses to the said questionnaire, on the ground that action by the defendants in preventing such distribution and publication, has resulted in and will continue to result in irreparable loss, injury and damage to the plaintiffs, and for such other relief as may be just.

SUFFICIENT CAUSE THEREFORE APPEARING, let personal service of a copy of this order and the papers upon which it was granted, on defendants on or before 5:00 P.M. on the 17th day of September, 1976, be deemed sufficient.

Done and ordered at the United States
Courthouse, Foley Square, New York,
New York this 17th day of September, 1976.

United States District Judge

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFF TRACHTMAN, Individually and By His Father,
GILBERT M. TRACHTMAN, on Behalf of JEFF
TRACHTMAN,

: CIVIL ACTION NO.

Plaintiffs,

:

-against-

AFFIDAVIT

IRVING ANKER, Individually and in His Capacity :
as Chancellor of New York City Public Schools,
SANFORD GELERNTER, Individually, and as :
Administrator of Student Affairs, Office of :
Student Affairs, Office of High Schools, Board :
of Education of the City of New York; GASPAR :
FABRICANTE, Individually, and a Principal of :
Stuyvesant High School, and; THE BOARD OF :
EDUCATION OF THE CITY OF NEW YORK, :

Defendants.

-----X
STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

MARTIN M. BERGER, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York,
and of this Court, and am a cooperating attorney of the New York
Civil Liberties Union, on whose behalf, as well as on the behalf
of the plaintiffs, this action is brought.

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2. The issues presented herein raise important questions under the First Amendment to the Constitution. As more fully described in the Complaint and the supplementary affidavit on this motion, the student plaintiff and others similarly situated, at Stuyvesant High School, have sought to engage in ascertaining the sexual attitudes of fellow students at the school, by seeking to engage in a sexual attitudes survey among their fellow students, a survey designed to protect the anonymity of respondents willing to participate. The conclusions of the survey as the anonymous responses were tabulated and interpreted were to be published in a periodical published at the school, entitled "The Stuyvesant Voice." The publication contains articles, columns and news stories and is edited by students at the high school. As a matter of courtesy, the student editor of the newspaper, the plaintiff, sought permission from the principal of the school, Gaspar Fabricante, to proceed, as above set forth. Permission was denied.

3. The students, plaintiff, and Robert M. Marx, thereupon inquired of the defendant, Board of Education of the City of New York ("Board") for permission to conduct the survey and publish the results. Defendant Sanford Gelernter, as Administrator of the Board's Office of Student Affairs - Office of High Schools, responded to the students' request for a review of Fabricante's

refusal to grant permission by further denial.

4. Subsequently, Irving Anker, in his capacity as Chancellor of the New York City high school, was requested to review the Gelernter determination. Without hearing on the matter, the Board in the face of Anker's failure to review, affirmed the determination of Gelernter.

5. Appended hereto are the following exhibits relevant to the issues raised by the Complaint and on this motion:

Exhibit A - A copy of the proposed cover letter prepared by the plaintiff and fellow students addressed to Students at Stuyvesant High School to be utilized in distributing the proposed questionnaire;

Exhibit B - A copy of the proposed questionnaire;

Exhibit C - A letter of inquiry to the Board's Office of High School Affairs - Office of Student Affairs;

Exhibit D - Defendant Gelernter's letter of December 17, 1975, denying permission to conduct the survey;

Exhibit E - Plaintiffs' letter of December 24, 1975, requesting defendant Anker to review the denial of permission by Gelernter.

Exhibit F - Plaintiffs' letter of January 13, 1976, to Harold Siegel, Secretary of defendant Board, appealing from Gelernter's determination.

Exhibit G - Determination of Defendant Board dated Feb. 24, 1976, affirming Gelernter's determination.

6. Deponent, on behalf of the plaintiff, and the other student involved, wrote Harold Siegel, Secretary of the defendant Board, on March 31, 1976, requesting further review of the determination. A copy of that letter is appended hereto as Exhibit H. By letter of April 7, 1976, (appended as Exhibit I), Mr. Siegel responded, in essence affirming the Board's determination.

7. The essential position of the defendants is that high school students are not to be entrusted to conduct surveys on sexuality because of the claimed "sensitivity" of the subject matter of the survey, and, assumedly, of the conclusions intended to be published.

8. Inability of the student editors of the "Stuyvesant Voice" to conduct their survey has, in effect, prevented their publication of the results in that periodical. The affirmed determination of the defendants has deprived students at the high school of the right to free expression under the First Amendment of the Constitution. Though the subject matter to be dealt with by the students is claimed by the officials, defendants here, to be of such "sensitivity" as to be "harmful to many adolescents asked to confront and respond to the questions" in the questionnaire. Yet, it is the

position of the defendant Board that the censorship and prior restraint imposed in this matter does not arise out of any claimed obscenity in the proposed questionnaire and the anticipated published results. "The Board's decision in the instant matter did not suggest that there was an obscenity factor." Exhibit I, Harold Siegel letter of April 7, 1976. Here, as in Tinker v. Des Moines Independent Community School District et al., 393 U.S. 503. "...There is not finding and no showing that the exercise of the forbidden right would 'materially and substantially interfere with the requirements of the appropriate discipline and the operation of the school', the prohibition cannot be sustained. Burnside v. Byars, supra, at 749."

Government could not prevent the distribution if the questionnaire by non-students, nor restrain non-students from the ultimate publication of interpretations and conclusions to be drawn from that questionnaire. The defendants deem the students, wishing to engage in the survey and the audience for the publication of the results, to have less rights than were they not viewed as students. The defendants' position is constitutionally invalid - "Students in school as well as out of school are 'persons' under our constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the

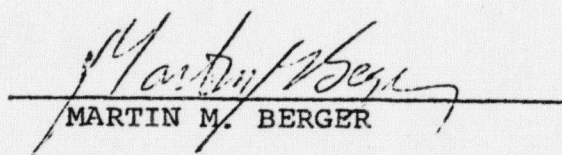
state. In our system, students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate. In the absence of the specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." Tinker, Id. Nothing within the Constitution refers to regulation of speech because of "sensitivity".

9. Under the circumstances, prohibiting the activity sought to be engaged in by the plaintiff and others similarly situated, is constitutionally impermissible, and should be restrained.

10. There are no controvertible facts at issue. All of the controversy is embraced in the documents appended as exhibits.

11. This motion has been brought on by Order to Show Cause because of the manifest urgencies pendent upon a new term commencing at Stuyvesant High School within the next several days. In order for the plaintiffs to exercise their constitutional right in conducting the survey and publishing the outcome in the first issue of the "Stuyvesant Voice", following the commencement of the term, it is essential that the relief sought herein be granted without delay. Passage of time will further erode the rights sought to be enforced in this action in that students desirous of participating in organizing and presenting the survey and its results to their fellow students will be graduating from Stuyvesant

High School at the end of this term and it is likely, were this matter to be dealt with in the ordinary course, the end of the school term would result in their graduation. Under all of the circumstances, it is respectfully requested that the accompanying Order to Show Cause be granted. *No prior application has been made for the same or similar relief as herein requested*
12. Plaintiff's motion for a preliminary and permanent injunction should be granted enjoining defendants from restraining or preventing the distribution of non-obscene and non-libelous literature including questionnaires directed to the students at Stuyvesant High School, on school property, and from preventing the publication of the conclusions, interpretations and results that may be obtained from those questionnaires, and judgment should issue declaring the rights of the parties.


MARTIN M. BERGER

Sworn to before me this
9 day of September, 1976

LILI HOFFMAN - No. 24-4524843
Notary Public, State of New York
Qualified in Kings County
My Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and By His
Father, Gilbert M. Trachtman, on Behalf of
JEFF TRACHTMAN and All Others Similarly
Sinited,

CIVIL ACTION NO.

Plaintiffs,

- against -

IRVING ANKER, Individually and in His Capacity
as Chancellor of New York City Public Schools,
SANFORD GELERNTER, Individually, and as
Administrator of Student Affairs, Office of
Student Affairs, Office of High Schools, Board
of Education of the City of New York; GASPAR
FABRICANTE, Individually, and as Principal
of Stuyvesant High School, and; THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

COMMONWEALTH OF MASSACHUSETTS)

: ss.:

COUNTY OF)

JEFF TRACHTMAN, being duly sworn, deposes and says:

1. I have read the affidavit of Martin M. Berger, my
attorney in the above matter, and affirm such of the contents
thereof as apply to my activity as an editor of the "Stuyvesant
Voice", in connection with attempts made by me and fellow students
at the high school to obtain permission to conduct a survey

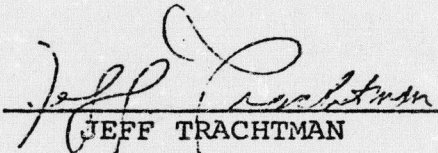
BEST COPY AVAILABLE

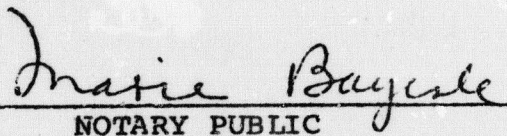
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respecting sexual attitudes at Stuyvesant High School, and to publish the results and conclusions derived from the survey in the "Stuyvesant Voice".

2. It is requested that the motion for summary judgment should be granted a preliminary and permanent injunction, and the declaration of rights of the parties all as requested in the complaint should issue.

Sworn to Before me This
26th day of August, 1976


JEFF TRACHTMAN


NOTARY PUBLIC

Marie Bayerte
Notary Public
My Commission Expires May 29, 1981

The Stuyvesant Voice

"SEXUALITY IN STUYVESANT"

Robert Marks

Mr. Fabbriante, Principal.

Mr. Pearlman, Faculty Advisor

Dear Participant,

The following is a survey for an article being written for the Stuyvesant Voice. The topic is "Sexuality in Stuyvesant". In this case, "sexuality" covers a wide area from human equality to sexual education.

Sexuality plays a very important role in society-far more important than many people realize. It affects every human encounter, every interplay and its effect is no weaker in Stuyvesant than anywhere else. With the help of this survey, I will attempt to draw some conclusions and interpretations concerning the influence of sexuality on the Stuyvesant community.

The questions asked are direct and personal. The survey is random and completely confidential. No one will know who has filled out your specific survey except you. Because of the strict precautions that are being taken to make all answers confidential, I am hoping that you will be as honest, open and responsible as possible when answering the questions. You are not required to answer any of the questions and if you feel particularly uncomfortable-don't push yourself. Any additional information that you feel is pertinent is more than welcome and extra space is provided for these comments.

The article itself, is a personal study of attitudes and ideas. It will contain some statistics, but only enough to demonstrate similarities and differences among the surveyed Stuyvesantians. But, to a greater extent, it will be a human article expressing human feelings on an underplayed and extremely important part of our lives.

Please consider your answers carefully. This survey comprises the bulk of the research for the article. honesty and responsibility cannot be stressed enough.

Your cooperation is greatly appreciated. Thank you.

Sincerely yours,

Robert A. Marks

Robert A. Marks

BEST COPY AVAILABLE

Exhibit "A"

000052

Questionnaire - Sexuality in Stuyvesant
Stuyvesant VOICE

1) Sex: _____

2) Grade: _____

3) What is your definition of sexuality?

4) Is the atmosphere different (in respect to sexuality) at Stuyvesant as opposed to your old school? Drastically _____ Little _____ Not at all _____.

Did you have trouble adjusting? Greatly _____ Somewhat _____ Not at all _____.

Comments?

5) Does sexual profanity offend you? Yes _____ No _____.

Comments?

6) What are your attitudes towards the traditional dating situation? eg. Only boy can ask girl out? Boy pays for date?

7) Are men equal to women? Totally _____ In most cases _____ Never _____.

Comments?

8) To what degree should unisexuality be carried? (It has been haircuts and clothing up to now, it could one day be bathrooms. How do you feel?)

9) Do sexual stereotypes exist? If yes, which do you feel most strongly about?

EXHIBIT B

000053

10) Do you feel the institution of marriage is outdated?
Greatly _____ Somewhat _____ Not at all _____.

Can you think of any alternatives?

11) Do you approve of pre-marital sexual relations?
Greatly disapprove _____ Some reservations _____ Approve _____.

Comments?

12) Do you approve of contraception?
Greatly disapprove _____ Some reservations _____ Approve _____.

Comments?

13) What types of contraception are you aware of? What types would you use?

14) How would you react to homosexuality if it occurred among your peers?
Extremely uncomfortable _____ Uncomfortable _____ Slightly Uncomfortable _____
Comfortable _____.

Comments?

15) Do you consider yourself a heterosexual _____, homosexual _____ or a bisexual _____?

Comments?

16) What are your feelings on homosexuality? Bisexuality?

17) Would you object to a homosexual or a bisexual in a position of authority?
Greatly _____ Somewhat _____ Not at all _____.

Comments?

18) What are your feelings on the topic of masturbation? Can it hurt the body? the mind?

000054

19) What are feelings on abortion? Would you conceivably have one yourself?

20) What is the extent of your sexual experience? Was this experience (whatever it may be) what you expected it to be?

21) Do you feel an emotional relationship must coexist with a sexual one? (or vis versa)
Yes _____ No _____.

Comments?

22) Where did most of your sexual education take place?
In my home _____ In school _____ Among my peers _____ Other _____.

Comments?

23) Do you feel your views on sexuality coincide with those of your parents? Do you get along with your parents? In what ways do their opinions agree or differ with yours?

24) Do you feel that your sexual education (emotional and factual) is complete? Are there or have there been deficiencies? Is it the school's job to correct this deficiency? Are you satisfied with the situation?

25) Do you feel a change to more liberal attitudes in respect to the topics discussed in this questionnaire, on the part of the society, would be good or bad? Why?

Comments on other areas not mentioned in this questionnaire would be greatly appreciated. You may also expand on any of the questions that were included. Finally, please include some feedback on the questionnaire itself.
Thank you for your cooperation.

000055

BOARD OF EDUCATION OF THE CITY OF NEW YORK
110 LIVINGSTON STREET, BROOKLYN, N. Y. 11201
OFFICE OF HIGH SCHOOLS

Office of Student Affairs

December 17, 1975

Mr. Robert A. Marks
% Stuyvesant High School
345 East 15 Street
New York, New York 10003

Dear Mr. Marks:

This letter is in response to your letter of December 4, 1975, in which you requested permission to conduct a survey on "Sexuality in Stuyvesant."

High School students may not conduct a survey on sexuality. Surveys of this type may only be conducted by responsible research organizations or graduate students and, even then, the survey may not be conducted unless it is approved by the principal, and the superintendent, and the Bureau of Research. In addition, a student may not be interviewed in a survey on a matter as personal and sensitive as sexuality unless advance written parental permission is obtained.

From the seriousness of your letter, I believe that you recognize the sensitivity of the subject. I trust you will also recognize the reasons why schools may not allow students to conduct the survey you requested.

Sincerely,

Sanford Gelernter

SANFORD GELERNTER
Administrator of Student Affairs

SS:VJD

CC:

James Hoffman, Supt.
Gasper Fabbriante, Principal
Donald Sussman, COSA

EXHIBIT D

000056

December 24, 1975

Irving Anker, Chancellor
New York City Board of Education
110 Livingston Street
Brooklyn, New York 11201

Dear Dr. Anker:

We contemplate writing an article on "Sexuality in Stuyvesant", for the VOICE, a student publication at Stuyvesant High School in Manhattan, and have devised the enclosed questionnaire as a means of obtaining information required for the project. The answers will be completely confidential, as questionnaires will be returned anonymously. The editor of the VOICE, and the entire Editorial Board have approved the article and the questionnaire.

Mr. Gelernter, Administrator of Student Affairs, has stated that high school students may not conduct a survey on sexuality, saying that only "responsible research organizations and graduate students" may conduct such surveys. He gave no authority for this ruling.

We believe that this prohibition violates our rights under the First Amendment to the Constitution, and ask that you reverse Mr. Gelernter's decision. Mr. Fabbricante, principal of Stuyvesant High School, has refused to make a definite ruling, and Mr. Gelernter has said that he represents the Executive Director in the field of student affairs, so we feel that an appeal to you is the only remaining alternative within the Board of Education.

We hope you give this matter serious consideration, and would greatly appreciate an early reply.

Sincerely,

Robert A. Marks

Robert A. Marks
Associate Editor, writer

Jeff Trachtman

Jeff Trachtman
Editor-in-Chief
Stuyvesant VOICE

enc.

EXHIBIT E

000057

January 13, 1976

Harold Siegel
Secretary, Board of Education
110 Livingston Street
Brooklyn, N.Y. 11201

Dear Mr. Siegel:

The enclosed letter was sent to Dr. Anker on December 24, 1975. It is an appeal made to a ruling by Sanford Gelernter that we could not conduct the research necessary for an article on "Sexuality in Stuyvesant", in Stuyvesant High School's VOICE. Mr. Gelernter's statement that "High School students may not conduct a survey on sexuality" seems both arbitrary and in violation of our constitutional rights. Dr. Anker has failed to respond to our letter, so we felt that an appeal to you was appropriate. We would appreciate an early response to this appeal; our legal advisor at the New York Civil Liberties Union informs us that there is a precedent for speedy action in such matters.

We thank you for your consideration of our case, and we hope that an acceptable solution can be reached.

Sincerely,

Robert A. Marks

Robert A. Marks
Associate Editor, writer

Jeff Trachtman

Jeff Trachtman
Editor-in-Chief
Stuyvesant VOICE

enc.

EXHIBIT F

000058

ISAIAH E. ROBINSON, JR., PRESIDENT
ROBERT J. CHRISTEN, VICE PRESIDENT
STEPHEN R. AIELLO
AMELIA ASHE
JOSEPH G. BARKAN
JOSEPH MONSERRAT
JAMES F. REGAN

IRVING ANKER, CHANCELLOR
HAROLD SIEGEL, SECRETARY

OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

February 27, 1976

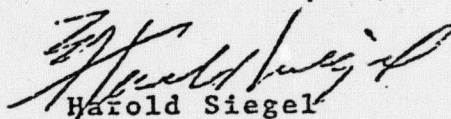
To: Mr. Irving Anker
Chancellor, Board of Education

Mr. Robert A. Marks and
Mr. Jeff Trachtman
c/o Stuyvesant Voice
Stuyvesant High School
345 East 15th Street
New York, New York 10003

In the Matter of the Appeal of Robert A. Marks and
Jeff Trachtman From a Refusal By a High School Division
to Permit Distribution of a Questionnaire to Pupils

Attached is a copy of the decision of the Board of Education in your
appeal as noted above. This decision was approved by the Board of
Education on February 24, 1976.

Very truly yours,


Harold Siegel
Secretary

HS:fb

Attachment

cc: Mr. Gaspar Fabbriante
Mr. Sanford Gelernter
Mr. James Boffman
Mr. Michael Rosen
Mr. Samuel Polatnick

EXHIBIT G

000059

IN THE MATTER OF THE APPEAL OF ROBERT A. MARKS AND JEFF TRACHTMAN
FROM A REFUSAL BY A HIGH SCHOOL DIVISION TO PERMIT
DISTRIBUTION OF A QUESTIONNAIRE TO PUPILS.

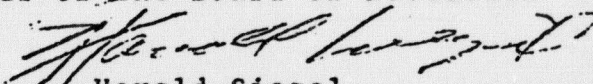
1/ Above named students are respectively associate editor and writer, and editor-in-chief of the Stuyvesant High School newspaper. Students were denied permission by the administrator of student affairs, to conduct a survey on "sexuality in Stuyvesant" for use in the school newspaper. A request to Chancellor Anker for a review has received no response to date.

Freedom of the press must be affirmed; however, no inquiry should invade the rights of other persons. Studies involving human subjects should be carried out by professional researchers and should be done only with the informed consent of the participants. These principles are endorsed by the professional organizations involved in research in the social sciences. The "Cooperative Procedures Governing Research Proposals Handbook for Research Applicants" clearly defines the application of this principle of research emphasizing that it be done only under the direction of professional researchers. This requirement is made even more necessary by the nature of the material in question. Matters dealing with sexuality could have serious consequences for the well being of the individual. Therefore, such questions require a special sensitivity, and as such further emphasize the need for supervision by professional researchers. The principle of informed consent requires that no individual be enlisted to take part in a research study unless that person is fully aware of the nature of the study and is fully capable of deciding to participate. Such decision cannot be made by minors without the consent of their parents. The Board's adherence to this principle is also outlined in the above mentioned handbook.

Despite claims of intended confidentiality, an instrument which attempts to measure sensitive areas within the confines of a single school setting cannot guarantee anonymity.

Members of the Board of Education having reviewed the material available conclude that they cannot approve the distribution of the questionnaire. We find that the rights of students and parents would be violated by the distribution of this questionnaire and that, therefore, such distribution would be contrary to the administrative procedures established by the Chancellor in accordance with central Board policy. //

By Order of the Board of Education •



Harold Siegel

Secretary

February 24, 1976

000060

March 31, 1976

Mr. Harold Siegel
Secretary
Board of Education of The City of New York
110 Livingston Street
Brooklyn, New York 11201

In the Matter of the Appeal of Robert A. Marks and
Jeff Trachtman From a Refusal By a High School Division
to Permit Distribution of a Questionnaire to Pupils

Dear Mr. Siegel:

I am a cooperating attorney with the New York Civil Liberties Union. I have been requested to commence litigation to enjoin the impact of the above decision by the above referred students of Stuyvesant High School and on behalf of the New York Civil Liberties Union.

I write at this time to request that prior to litigation there be a reconsideration of the decision. I believe after review the Board and the Chancellor will agree with our conclusion that the decision is violative of our clients' constitutional rights as have previously been enunciated at both the Federal and the State Courts.

I call your attention to judgment in Supreme Court, Nassau County, in the matter of Patricia Burford, etc. v. Board of Education, et. al. (Index No. 8482/1972). There are enclosed a copy of a transcript of a hearing in that matter on August 16, 1972, as well as a copy of the judgment entered by the Court in that matter. You will note that that case likewise involved a survey questionnaire, and the Court in directing the return of materials confiscated by school authorities stated in the transcript (p.3.):

"There is no doubt, however in the Court's mind that the students have a constitutional right to freedom of speech. This includes

EXHIBIT H

000061

the reasonable dissemination of material in a school, which is a public place, providing there is no obscenity or disruption.

"The Court is skeptical of the action of the School. The questionnaires impounded are not obscene on their face. While they inquire into subjects which many may deem unduly sensitive, personal or offensive, they do not fall within the modern proscriptions of impermissible obscene material. In its review of the questionnaire, the Court finds some distasteful material. However, it cannot say that there is that obscenity which justifies impairment of free speech.

"The authority of the School Board to make the confiscation on other grounds is not established. There appears neither disruptive behavior, nor any 'acceptable pedagogical reasons for violation of student's right.' 'See Koppell v. Levine, Fed. Supp. (USDC - ED, Weinstein, J. Memo 72 - C - 527)"

This decision cited by Judge Harnett in the quotation above from the Burford case, Kopell v. Levine involved the censorship of a student publication, as you know, by administrative personnel of the Board. The Court there conclusively held that there is no "...constitutional permissible censorship (unless) premised on a rational finding of harmfulness to the group (to whom the material is directed or to whom it is withheld)". No such finding can be made in the instant matter and the restraining imposed on the students clearly would be stricken on an application to the Court.

Under the circumstances, and in light of the persuasive and clear-cut decisional precedence on matters squarely in point, the Board's failure to review and reverse the previous decision, in our opinion would clearly establish a posture of bad faith, which would warrant the assessment of damages and counsel fees on an application for injunctive relief.

Our clients' desire to proceed as expeditiously as possible in order to be able to publish the results of their survey before the end of

the school year. Accordingly, you are requested to advise without delay whether the above decision will be reviewed and the outcome of the review if any is had. Absent communication from you with regard to this matter within the next several days, the passage of time will compel us to move thereafter for injunctive relief.

I await word from you.

Very truly yours,

MARTIN M. BERGER

MMB/yc
Encls.

bcc.: Alan H. Levine, Esq.
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011

BEST COPY AVAILABLE

000063

BOARD OF EDUCATION

OF THE CITY OF NEW YORK

110 LIVINGSTON STREET

BROOKLYN, N.Y. 11201

ISAIAH E. ROBINSON, JR., PRESIDENT
ROBERT J. CHRISTEN, VICE PRESIDENT
STEPHEN R. AIELLO
AMELIA ASHE
JOSEPH G. BARKAN
JOSEPH MONSERRAT
JAMES F. REGAN

IRVING ANKER, CHANCELLOR
HAROLD SIEGEL, SECRETARY

April 7, 1976

Martin M. Berger, Esq.
Berger, Kramer & Levenson, Esqs.
377 Broadway
New York, N. Y. 10013

re: In the Matter of the Appeal of Robert A. Marks
and Jeff Trachtman From a Refusal by a High School
Division to Permit Distribution of a Questionnaire
to Pupils

Dear Mr. Berger:

This will acknowledge receipt of your letter dated March 31st which arrived at this office on April 5, 1976. I am hastily dictating this prior to leaving town for about one week. It may be that we should discuss this. I will be back in my office on April 19th. If you wish to call me the telephone number is 596-8175.

In the meanwhile, I would like to indicate to you that our reading of the law is somewhat different from yours. The Kopell case involved a question of obscenity. Basically the Federal Court overruled the Board of Education on the finding that the document involved was not obscene. The Board's decision in the instant matter did not suggest that there was an obscenity factor.

I am sure that you will agree that the rights of pupils in schools are not absolute and unlimited. Your quote on Page 2 notes, "...a finding of harmfulness" would be pertinent. We cannot agree that, "...no such finding can be made in the instant matter." The Board's decision clearly states that, "the nature of the materialcould have serious consequences to the well-being of the individual."

Furthermore, it is our opinion that students doing research or questionnaires would be governed by the same rules and regulations that are applicable to any other researcher. The pupils in this case were advised of the existence of such rules. (Gelernter/Marks 12/17/75)

I am not clear as to the nature of the questionnaire involved in the Burford case. It is the belief of the Board that the material in the proposed questionnaire goes beyond the matter of "taste."

Exhs. I

(continued)

000064

Martin M. Berger, Esq.

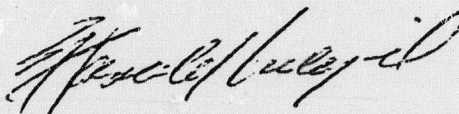
April 7, 1976
Page -2-

It is believed that the material in the questionnaire would, in fact, be harmful to many adolescents asked to confront and respond to the questions in this questionnaire.

Frankly, it is my opinion that if this were to go to trial, the issue would not be the rights of pupils. This Board of Education is sensitive to those rights. The issue may well be resolved in terms of professional judgments as to the potential harmfulness of the material to the population to which it would be addressed.

I would be glad, as I indicated earlier, to discuss this with you further.

Very truly yours,



Harold Siegel
Secretary

HS:ls

000065

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney
☐ Attorney's Affirmation

certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Check Applicable Box

☐ Individual Verification
☐ Corporate Verification

the foregoing the
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

the of
a corporation,
foregoing in the within action; deponent has read the and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19 _____
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

being duly sworn, deposes and says: deponent is not a party to the action,

is over 18 years of age and resides at

Check Applicable Box

☐ Affidavit of Service By Mail
☐ Affidavit of Personal Service

On 19 deponent served the within attorney(s) for upon in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

On 19 at upon the

herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19 _____
The name signed must be printed beneath

000166

NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) WALKER 5-7421

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: - Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) WALKER 5-7421

To

Attorney(s) for

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, etc.,

Plaintiffs,

- against -

IRVING ANKER, et. al.,

Defendants.

ORDER TO SHOW CAUSE

MARTIN M. Berger, Esq
~~BERGER, KRAMER & LEVENSON~~

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) WALKER 5-7421

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and by
his father, GILBERT M. TRACHTMAN,

Plaintiffs,

v.

IRVING ANKER, Individually and in his
capacity as Chancellor of New York City :
Public Schools, SANFORD GELEENTER, indi- :
vidually and as Administrator of Student :
Affairs, Office of Student Affairs, :
Office of High Schools, Board of Educa- :
tion of the City of New York; GASPAR :
FABRICANTE, individually, and as Prin- :
cipal of Stuyvesant High School, and :
THE BOARD OF EDUCATION OF THE CITY OF :
NEW YORK,

Defendants.

AFFIDAVIT

76 Civ. 3845
(CBM)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT DEUTSCH, being duly sworn, deposes and
says:

1. I am a member of the Bar of the State of New
York and of this Court, and am an attorney in the office of
W. BERNARD RICHLAND, Corporation Counsel, attorney for
defendants herein and submit this affidavit in opposition
to plaintiffs' application for preliminary injunctive and
declaratory relief (Summary Judgment).

2. That branch of the application seeking decla-
ratory relief must be denied as a matter of law. As plain-
tiffs request declaratory relief in their complaint, to seek
it on this application is a request for summary judgment.

3. This is evidenced by paragraph 2 of the
affidavit of plaintiff Jeff Trachtman, submitted in support
of this application, wherein he requests:

"that the motion for summary judgment
... be granted."

4. Further evidence of plaintiffs' desire to obtain judgment herein is found in paragraph 10 of the affidavit of plaintiffs' attorney. He states that:

"There are no controvertible facts at issue."

5. The possible harm to students that may be caused by the distribution of this survey is just one of the questions of fact that should be resolved by a jury.

6. It is obvious that plaintiffs have failed to comply with Rule 56 of the Federal Rules of Civil Procedure and therefore that portion of their request which seeks summary judgment must be denied.

7. Plaintiffs invoke the jurisdiction of this court under 42 USC 1983 seeking declaratory and injunctive relief.

8. It is well settled in this circuit that no jurisdiction exists over defendant Board of Education pursuant to 42 USC 1983 and therefore, as to it, this complaint must be dismissed as a matter of law (Monell v. Dept. of Soc. Serv. of the City of New York, 532 F 2d 259 at 264; 2nd Cir., 1976).

9. Plaintiffs did not effectuate timely service of the Order to Show Cause on defendant Fabricante and therefore the relief sought therein cannot be granted as to him.

10. Defendant Anker, by plaintiffs' own admission at paragraph 14 of the complaint, did not make any decision concerning distribution of the survey and therefore plaintiffs have stated no claim against him upon which relief can be granted.

11. Defendant Gelernter does not have the authority to implement the order sought by plaintiffs and therefore as to him such relief cannot be granted.

12. Further, plaintiffs have failed to show either a likelihood of success on the merits or irreparable harm both of which must be established if a preliminary injunction is to issue.

13. The decision at issue herein was made by the Board of Education on February 24, 1976 and reaffirmed on April 7, 1976. Plaintiffs took no action with respect thereto until they instituted this lawsuit on August 26, 1976. They did not seek the preliminary injunction they now claim to urgently need until September 17, 1976.

14. In light of plaintiffs' severe laches, their claim that the "[p]assage of time will further erode the rights sought to be enforced in this action . . ." must fail.

15. If plaintiffs should ultimately prevail the only damage they will suffer will be a delay on the distribution of their survey.

16. If a preliminary injunction were the issue allowing distribution of the survey it is defendants, more accurately the students, who may be irreparably harmed.

17. The decision not to allow distribution of the survey within the school was made out of a very real concern for the welfare of the students. It should be emphasized at this point that contrary to plaintiffs' contention the issue of a denial of the right to publish is not presently before this court, plaintiffs never having submitted anything for publication.

18. As is evident from the affidavits of Ingram Cohen, M.D., Chief School Psychiatrist, of the Bureau of Child Guidance of the New York City Board of Education and Vera S. Paster, Ph.D., Assistant Director of the Bureau of Child Guidance (attached hereto) the surveys are not as simple and harmless as plaintiffs purport.

19. Even if only a small minority of children in the school could be injured by the distribution of the survey, the defendants had not only the right but the obligation to stop distribution thereof.

20. At issue herein is not the violent disruption within the school nor a question of obscenity as discussed in cases cited by plaintiffs but rather something more severe, possible emotional and psychological damage to children.

21. To allow distribution of the survey before a decision on the merits would result in far more harm than to require plaintiffs, who waited five months before seeking this injunction, to wait until disposition of their claim after trial.

22. It is clear therefore that plaintiffs have failed to establish the irreparable harm necessary to be successful herein.

23. Further, plaintiffs have failed to establish a likelihood of success on the merits.

24. Before research can be conducted within the New York City school system certain procedures must be followed. A copy of these procedures is annexed hereto as Exhibit "A".

25. The need for these regulations is obvious when one considers that the school system offers researchers one of the best populations available.

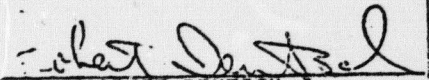
26. There can be no dispute that plaintiffs failed to comply with these procedures.

27. Plaintiffs clearly intended this survey to be a research project. This is evidenced by a letter dated December 4, 1976, from Robert Marks, the designer of the survey, to defendant Galernter. (attached hereto as Exhibit "B").

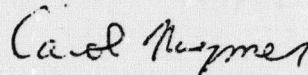
28. This is not a case of defendants preventing dissemination of information as plaintiffs suggest. Rather it is a case where defendants, in consideration of the welfare of the students, decided to prevent distribution of a survey that may be damaging to some students.

29. This decision, supported by the Chief School Psychiatrist of the Bureau of Child Guidance and the Assistant Director of that Bureau, was clearly reasonable and proper. The courts should not interfere with the judgment of defendants where such judgment is rational and based upon an expertise of defendants as is the case herein.

WHEREFORE, I respectfully submit that for the reasons set forth herein the application of plaintiffs should be denied.


ROBERT DEUTSCH

Sworn to before me this
23rd day of September, 1976.



CAROL WEXLER
Notary Public, State of New York
No. 41-4954453
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFF TRACHTMAN, Individually and By His Father,
Gilbert M. Trachtman, on Behalf of JEFF
TRACHTMAN,

Plaintiff,

: CIVIL ACTION NO.
76 Civ. 3845

-against-

IRVING ANKER, Individually and in His Capacity :
as Chancellor of New York City Public Schools, :
SANFORD GELERNTER, Individually, and as :
Administrator of Student Affairs, Office of :
Student Affairs, Office of High Schools, Board :
of Education of the City of New York; GASPAR :
FABRICANTE, Individually, and as Principal of :
Stuyvesant High School, and; THE BOARD OF :
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

:
AFFIDAVIT IN
OPPOSITION TO
APPLICATION FOR
PRELIMINARY
INJUNCTION
AND DECLARATORY
RELIEF.

-----X
Ingram Cohen, M.D. being duly sworn deposes and says:

1. I am currently Chief School Psychiatrist of the
Bureau of Child Guidance for the New York City Board of Education
and am a physician licensed in the State of New York practicing
the specialty of psychiatry and have received additional training
in Child and Adolescent Psychiatry. I am certified by the
American Board of Psychiatry and Neurology as a Diplomate in
Psychiatry and Diplomate in Child/Adolescent Psychiatry.
Additionally I am appointed to the faculty of the Department of
Psychiatry of the Downstate Medical Center College of Medicine
and to the Mt. Sinai Medical School Services at Elmhurst
Developmental Evaluation Clinic. I also serve as a Consultant
in the National Institute of Mental Health, Department of Health
Education and Welfare.

2. I submit this affidavit in opposition to plaintiffs'
application for preliminary injunctive and declaratory relief.

3. In reviewing the proposal to prepare an article on
"Sexuality in Stuyvesant" based upon a research survey, concerns

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arise relative to the impact of such a survey on students ranging in age from 13-18 who are to be canvassed. This period of a high school student's life is fraught with many changes related to physical maturation and psychological development. Wide discrepancies exist among students who are even of the same age. Unevenness in development is common so that what may appear to be an insignificant question may ultimately represent a source of concern or provocation to a student leading to preoccupations, recurrent thoughts and outright anxiety and depression.

4. Certain questions may bring a student into conflict with himself, e.g. (15) wherein a student is asked to make a judgment concerning himself. A student who has doubts concerning sexual orientation may become anxious or even depressed; (20) where a student is expected to reveal matters which are highly personal experiences generally regarded as a private matter. Question (22) delves into parent/student relations to relate this data to sexual views. While this may be valuable in research, it also contains the risk of arousing conflict in a student's mind concerning his relationship to parent.

5. In summary while the questionnaire may represent a valuable research tool in the hands of skilled professional investigators, wherein informed counsel is given by adults, I view the current proposal to administer the questionnaire to immature high school youth, still in the throes of resolving their personal identity, as sufficiently provocative and potentially harmful to arouse concern. Further no provision is made for students who may react by becoming upset and require assistance to cope with their anxieties or depression.

6. Accordingly it is my professional opinion that the survey questionnaire as presented be disapproved for dissemination among students.

Wherefore, I respectfully request that plaintiffs application for relief be denied.

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Sworn to Before me
this ^{22nd} day of September,
1976.

S/
Ingram Cohen M.D.

JULIUS KAPLAN
Commissioner of Deeds
City of New York 2-1760
Certificate filed in Kings County
Commission Expires May 1, 1977

Julius Kaplan

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and By His Father,
Gilbert M. Trachtman, on Behalf of JEFF
TRACHTMAN,

Plaintiff,

CIVIL ACTION
NO. 76 Civ.
3845

-against-

IRVING ANKER, Individually and in His Capacity
as Chancellor of New York City Public Schools,
SANFORD GELERNTER, Individually, and as
Administrator of Student Affairs, Office of
Student Affairs, Office of High Schools, Board
of Education of the City of New York; GASPAR
FABRICANTE, Individually, and as Principal of
Stuyvesant High School, and; THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

AFFIDAVIT IN
OPPOSITION TO
APPLICATION FOR
PRELIMINARY
INJUNCTION
AND DECLARATORY
RELIEF.

Vera S. Paster, Ph.D. being duly sworn deposes and says:

1. I am a Psychologist, licensed in that capacity by
the State of New York. I am also the Assistant Director of the
Bureau of Child Guidance, which is the Mental Health Agency of
the New York City school system. With this background I have reviewed the
proposed survey on "Sexuality In Stuyvesant."

2. It is my opinion that the survey in its present state, to be
disseminated among the students of Stuyvesant High School at random as
proposed, constitutes a potentially harmful exposure to some students.
If such a survey were to be adopted, the conditions of data gathering would
legitimately fall within the current regulations concerning the necessity
to provide protection for human subjects of research.

3. The questionnaire, in my opinion, could be well managed
emotionally and intellectually by reasonably sophisticated adolescents.
Undoubtedly, potential recipients would include a large number or even
a majority of such persons. On the other hand undoubtedly also, there are
a large number of relatively immature adolescents, insofar as their degree
of comfort in dealing with their own sexuality and the sexual behavior of
others is concerned. In addition, there also is, according to my information,

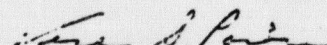
000073

and observations, a group of adolescents who are actively struggling with a variety of anxiety laden conflicts about their own sexuality issues. Both of these latter groups of students may react to the kind of attention and emotional involvement necessary to reply to this questionnaire with an up-churning of anxiety, conflict, self-doubt and other symptoms of stress. These students would require the ready availability of acceptable (to them) resources which would help them deal with these reactions, and also with their exacerbated under-lying sexual problems.

4. The obligations to provide protection to human subjects of research would require that such provisions be available to such students. There is no indication that this kind of protection is a part of the proposed survey plans. Ethical standards for data gathering of this kind also require informed consent of participants. It would be necessary, therefore, that students who are attracted to the questionnaire, and who wish to complete it, be informed that they may experience certain worries and tensions as a result of confronting some of the issues within the questionnaire. This, in my opinion, would constitute a minimal attention to informing the potential participants.

5. Considering these issues, the difficulties of students fulfilling these responsibilities, and certainly the difficulties of these standards being fulfilled by anyone engaged in mass random data collection, I would personally advise against the Board of Education permitting this situation to occur.

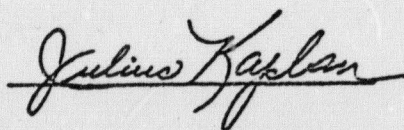
Wherefore, I respectfully request that plaintiffs' application for relief be denied.


Vera S. Paster, Ph.D.

Sworn to Before Me

This ND 22 Day of September, 1976.

JULIUS KAPLAN
Commissioner of Deeds
City of New York 2-1750
Certificate filed in Kings County
Commission Expires May 1, 1977



000076



BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF EDUCATIONAL EVALUATION
110 LIVINGSTON STREET, BROOKLYN, N. Y. 11201

Feb
ANTHONY J. POLEMENI, Ph.D.
DIRECTOR (ACTING)

Stuyvesant

COOPERATIVE PROCEDURES GOVERNING RESEARCH PROPOSALS

Handbook for Research Applicants

January, 1975

BEST COPY AVAILABLE

EXHIBIT "A"

Deutsch aff 000077

FOREWORD

The Office of Educational Evaluation of the New York City Board of Education has prepared this Handbook as a guide to agencies and individuals desiring to conduct research involving New York City school personnel or records. The Handbook indicates the proper procedure to be followed in applying for authorization to engage in such research.

The Office will make every effort to cooperate with qualified applicants, provided that such applicants adhere closely to the procedures outlined herein. Two classes of investigators are provided for in this Handbook:

Qualified agencies, such as medical and psychotherapeutic centers, civic agencies, and university research bureaus.
(Follow procedures on pages 1 - 3).

Candidates for graduate degrees.
(Follow procedures on pages 4 - 7).

The following criteria are used in evaluating proposed research:

1. The study must show promise of educational value.
2. School personnel may be expected to cooperate only for a reasonable period of time. Excessive time requirements which may infringe on instructional time are not permitted.
3. It is contrary to the policy of the Board of Education to permit inquiry of school personnel (supervisors, teachers, or students) regarding age, home address, occupation, education, financial status, marital status, ethnic or religious status or similar questions which might invade the privacy of the individual.

PROCEDURES TO BE FOLLOWED BY QUALIFIED AGENCIES SUCH MEDICAL
AND PSYCHOTHERAPEUTIC CENTERS, CIVIC AGENCIES,
AND UNIVERSITY RESEARCH BUREAUS

1. Individual investigators representing agencies requesting permission to conduct research or testing projects in the public schools or other subdivisions of the Board of Education are required to send the following information to the Director of the Office of Educational Evaluation.
 - 1.1 Name, address, telephone number of principal investigator
 - 1.2 Full title of study
 - 1.3 Identification of sponsor
 - 1.4 Purpose of research
 - 1.5 Number of schools involved
 - 1.6 School personnel involved - Elementary, Junior High, Senior High
 - 1.7 Estimate of time to be spent in the Schools
 - 1.8 Investigator's qualifications
 - 1.9 Brief general description of the project
 - 1.10 Step-by-step outline of project
 - 1.11 If the project is in the field of psychology, all of the above PLUS signed approval by the Director of the Bureau of Child Guidance.
 - 1.12 If the project is in the field of mental retardation, all of the above (excluding 1.11) PLUS signed approval by the Director of the Bureau for Children with Retarded Mental Development
 - 1.13 If the project is in the field of physical disability, all of the above (excluding 1.11 and 1.12) PLUS signed approval by the Assistant Superintendent of the Office of Special Education and Pupil Personnel Services. (Said Office requires 12 copies of the protocol so that it may be processed through the Coordinating Council on School Health).
2. Upon receipt of this information, the Director of the Office of Educational Evaluation will send to the investigator a copy of the official application form which is to be signed by the principal and community superintendent.
3. After the investigator has received the official application form, he is ready to apply for permission to conduct his research in the New York City schools by following the steps listed below:
 - 3.1 The investigator will apply personally to the principal of each school selected to determine if the principal is willing to participate in the project. The principal will base his determination on such factors as:
 - Educational value to the school
 - Instructional time required by the research
 - Evaluative measures to be applied
 - 3.2 If the principal signs the official application forms presented by the investigator it indicates his willingness to cooperate in the project if and when it has been approved by the Office of Educational Evaluation. The principal's signature is not binding if the study is disapproved by the Office.

- 3.3 Since the application will accommodate as many as five signatures, it may be used for five schools provided they are all under the jurisdiction of one community superintendent. In each instance the procedure in 3.1 and 3.2 must be followed.
- 3.4 The investigator will then present the application forms to the community superintendent of the district concerned for countersignature. The community superintendent should receive information similar to that supplied to the principals. (This step is omitted when the research is to be conducted in academic and vocational high schools; the Office of Educational Evaluation will seek the necessary permission from the appropriate Assistant Superintendent).
4. After the investigator has obtained the necessary signatures, he will submit to the Director of the Office of Educational Evaluation:
- The completed application forms
The detailed research design
Evaluative materials or instruments to be used in the project
(questionnaires, data sheets, check lists, etc.)
(Copies of standardized tests are not required)
- (In the event that new evaluative instruments or procedures which were not described or submitted in the original proposal are later introduced, these new instruments and/or procedures must be submitted to the Office of Educational Evaluation before they may be incorporated into the research design or administered in the schools).
5. The Office of Educational Evaluation with the appropriate headquarter's agencies will then evaluate and process the proposal for clearance.
6. When a project has been jointly approved by the Director of the Office of Educational Evaluation and the appropriate central agencies, a letter of approval will be sent to the investigator. This letter, containing conditional restrictions, if any, may then be duplicated by the investigator for submission to principals and community superintendents.
7. It is not possible to predict the exact length of time necessary to process an application. The investigator may be assured, however, that the Office of Educational Evaluation will make every effort to avoid undue delay.

Related Information

1. The decision to participate in a research project rests on the individual judgment of a school principal or department head or superintendent with the approval of appropriate headquarter's agencies.
2. The investigator does not have direct access to files and records; he may receive only such data as the principal deems feasible to release.

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3. The investigator is expected to collect and process his own data; assistance from Board of Education personnel should be minimal.
4. Any typescript intended for publication is to be submitted to the Office of Educational Evaluation for examination.
5. Upon completion of his study, the investigator will submit an abstract of the report to the Director of the Office of Educational Evaluation. In a testing project, the investigator will make the results available to the cooperating school.
6. All research proposals submitted to the Office of Educational Evaluation for review and evaluation remain on file at the Office.
7. The investigator is required to maintain absolute anonymity of the cooperating school and school personnel in any report which he may prepare.
8. Investigators are expected to follow the approved step-by-step outline strictly and not introduce procedures not approved in advance. Further, if the investigator wishes to extend his study to additional schools or significantly alter the procedure, he must notify the Office and submit the new procedures or instruments for clearance.
9. WRITTEN PARENTAL CONSENT MUST BE OBTAINED BY THE INVESTIGATOR IN ORDER TO INSPECT PUPIL RECORDS, ADMINISTER QUESTIONNAIRES, HOLD INTERVIEWS, ADMINISTER TESTS, OR TO INVOLVE STUDENTS IN ANY MANNER.

This permission must be obtained AFTER the investigator has received approval from the Office of Educational Evaluation, but BEFORE the actual research is begun.

The request form used to obtain parental consent must contain explanations of purpose of the evaluative instruments and procedures.

The Office of Educational Evaluation will provide a model Parental Consent Form when a study is approved.

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PROCEDURES TO BE FOLLOWED BY CANDIDATES FOR
GRADUATE DEGREES

It is assumed that the college or university will act as mentor to the student, guiding him in the choice of a topic, in the preparation of his outline, in the design of his research project, and in the plan of operation.

After the candidate has completed all preparatory steps required by the university, culminating in the official approval of his research outline, he is ready to apply to the Office of Educational Evaluation for permission to conduct his research in selected schools in compliance with the following procedures:

1. The candidate will write to the Director, Office of Educational Evaluation, 110 Livingston Street, Brooklyn, New York 11201, including the following details:
 - 1.1 Name, address, telephone number.
 - 1.2 Full title of study.
 - 1.3 Name of college or university.
 - 1.4 Degree sought.
 - 1.5 Number of schools involved.
 - 1.6 School personnel involved - Elementary, Junior High, Senior High.
 - 1.7 Estimate of time to be spent in schools.
 - 1.8 Brief general description of the project.
 - 1.9 Step-by-step outline of project, signed by sponsor(s).
 - 1.10 If the project is in the field of psychology, all of the above PLUS signed approval by the Director of the Bureau of Child Guidance.
 - 1.11 If the project is in the field of mental retardation, all of the above (excluding 1.10) PLUS signed approval by the Director of the Bureau for Children with Retarded Mental Development.
 - 1.12 If the project is in the field of physical disability, all of the above (excluding 1.10 and 1.11) PLUS signed approval by the Assistant Superintendent of the Office of Special Education and Pupil Personnel Services. (Said Office requires 12 copies of the protocol so that it may be processed through the Coordinating Council on School Health).
2. Upon receipt of this information, the Office of Educational Evaluation will send to the candidate a copy of the official application form which is to be signed by cooperating principals and community superintendents.
3. After the candidate has received the official application form, he is ready to apply for permission to conduct his research in the New York City schools by following the steps listed below:

- 3.1 The candidate will apply personally to the principal of each school selected to determine if the principal is willing to participate in the project. The principal will base his determination on such factors as:

Evidence of the approval of the university
Educational value to the school
Instructional time required by the research
Evaluative measures to be applied

- 3.2 If the principal signs the official application form presented by the candidate, it indicates his willingness to cooperate in the project if and when it has been approved by the Office of Educational Evaluation. The principal's signature is not binding if the study is disapproved by the Office.
- 3.3 Since the application form accommodates as many as five signatures, it may be used for five schools providing the schools are all under the jurisdiction of one community superintendent. In each instance, the procedure in 3.1 and 3.2 must be followed.
- 3.4 The candidate will then present the application form to the community superintendent of the school district concerned for countersignature. The community superintendent should receive information similar to that supplied to the principals. (This step is omitted when the research is to be conducted in academic and vocational high schools; the Office of Educational Evaluation will seek the necessary permission from the appropriate Assistant Superintendent).
4. After the candidate has obtained the necessary signatures, he will submit to the Director of the Office of Educational Evaluation:
- The completed application forms
The detailed research design
Evaluative materials or instruments to be used in the project
(questionnaires, data sheets, checklists, etc.)
Copies of standardized tests are not required
- (In the event that new evaluative instruments or procedures which were not described or submitted in the original proposal are later introduced, these new instruments and/or procedures must be submitted to the Office of Educational Evaluation before they may be incorporated into the research design or administered in the schools).
5. The Office of Educational Evaluation with the appropriate headquarter's agencies will then evaluate and process the proposal for clearance.
6. When a project has been jointly approved by the Director of the Office of Educational Evaluation and the appropriate central agencies, a letter of approval will be sent to the investigator. This letter, containing conditional restrictions, if any, may then be duplicated by the investigator for submission to principals and community superintendents.

7. It is not possible to predict the exact length of time necessary to process an application. The investigator may be assured, however, that the Office of Educational Evaluation will make every effort to avoid undue delay.

Related Information

1. The investigator should not write to the Director of the Office of Educational Evaluation until he has obtained the official approval of his sponsoring committee.
2. The outline submitted for examination must be typewritten.
3. The decision to participate in a research project rests on the individual judgment of a school principal or department head or superintendent with the approval of appropriate headquarter's agencies.
4. The investigator does not have direct access to files and records; he may receive only such data as the principal deems feasible to release.
5. The investigator is expected to collect and process his own data; assistance from Board of Education personnel should be minimal.
6. It is understood that New York City school personnel while on active duty may not engage in research for their personal advancement during school or office hours.
7. Any typescript intended for publication is to be submitted to the Office of Educational Evaluation for examination.
8. Upon completion of his study, the investigator will submit an abstract of the report to the Director of the Office of Educational Evaluation. In a testing project, the investigator will make the results available to the cooperating school.
9. All research proposals submitted to the Office of Educational Evaluation for review and evaluation remain on file at the Office.
10. The investigator is required to maintain absolute anonymity of the cooperating school and school personnel in any report which he may prepare.
11. Investigators are expected to follow the approved step-by-step outline strictly and not introduce procedures not approved in advance. Further, if the investigator wishes to extend his study to additional schools or significantly alter the procedure, he must notify the Bureau and submit the new procedures or instruments for clearance.

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12. WRITTEN PARENTAL CONSENT MUST BE OBTAINED BY THE INVESTIGATOR IN ORDER TO INSPECT PUPIL RECORDS, ADMINISTER QUESTIONNAIRES, HOLD INTERVIEWS, ADMINISTER TESTS, OR TO INVOLVE STUDENTS IN ANY MANNER.

This permission must be obtained AFTER the investigator has received approval from the Office of Educational Evaluation, but BEFORE the actual research is begun.

The request form used to obtain parental consent must contain explanations of purpose of the evaluative instruments and procedures.

The Office of Educational Evaluation will provide a model Parental Consent Form when a study is approved.

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RESEARCH APPLICATION

The applicant identified below has obtained preliminary clearance to conduct research in the N.Y.C. Public Schools, and may now seek principals and community superintendents to cooperate in the study. However, before he may begin the actual study, the applicant must present cooperating personnel with a signed letter of approval which he will receive upon fulfillment of all necessary requirements, from the Director, Office of Educational Evaluation.

Name of Applicant Mailing Address Telephone

University or Organization Affiliation _____

If investigator is a candidate for a degree, which degree? _____

Is investigator a member of the N.Y.C. School System? Yes _____ No _____

Title of Study _____

List tests, questionnaires, interview schedules and other evaluative instruments to be used. COPIES OF THESE INSTRUMENTS, A BRIEF DESCRIPTION OF THE PROJECT, AND A STEP-BY-STEP OUTLINE OF THE PROJECT MUST BE ATTACHED TO THIS APPLICATION WHEN IT IS PRESENTED TO PRINCIPALS AND COMMUNITY SUPERINTENDENTS.

Estimated duration of study: _____

Cooperating School	Grade	School Personnel		Signature of Principal
		# of Classes	# of Pupils	
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____

Signature of Community Superint. Sent _____

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Board of Education of the City of New York

Name of School
Address of School

Name of Principal

Date _____

REQUEST FOR PERMISSION TO COLLECT STUDENT
PERSONAL DATA *

Sponsor

Special request for authorization of student to (answer questionnaire submitted by the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education and the Human Affairs Research Center).

Purpose

To provide information (on which the State of New York may plan more effectively for reviewing programs and administrative procedures in our high schools).

Contents of Questionnaire, Test, or Interview

(The questionnaire will contain queries concerning your child's attitude toward his school mates, school, teachers, academic program etc.)

Confidentiality

The (questionnaire) will include no identifying device, signature or number so that the confidentiality of your child's reply will be completely secure.

Please check the appropriate box signifying your approval or disapproval of this request, sign the form in the space provided below and return in enclosed envelope.

____ Approve

____ Disapprove

____ Parents Signature

____ Date

* Note: Researcher should substitute his own pertinent material for the material in parentheses.

Parental permission must be sought by researcher in order to inspect pupil records, administer questionnaires, hold interviews, administer tests, etc.

000087

Board of Education of the City of New York

Name of School
Address of School

Name of Principal

Date _____

REQUEST FOR PERMISSION TO COLLECT STUDENT
PERSONAL DATA *

Sponsor

Special request for authorization of student to (answer questionnaire submitted by the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education and the Human Affairs Research Center).

Purpose

To provide information (on which the State of New York may plan more effectively for reviewing programs and administrative procedures in our high schools).

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Please check the appropriate box signifying your approval or disapproval of this request, sign the form in the space provided below and return in enclosed envelope.

____ Approve

____ Disapprove

____ Parents Signature

____ Date

* Note: Researcher should substitute his own pertinent material for the material in parentheses.

Parental permission must be sought by researcher in order to inspect pupil records, administer questionnaires, hold interviews, administer tests, etc.

000088

Board of Education of the City of New York

Name of School
Address of School

Name of Principal

Date _____

REQUEST FOR PERMISSION TO COLLECT STUDENT
PERSONAL DATA *

Sponsor

Special request for authorization of student to (answer questionnaire submitted by the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education and the Human Affairs Research Center).

Purpose

To provide information (on which the State of New York may plan more effectively for reviewing programs and administrative procedures in our high schools).

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Confidentiality

The (questionnaire) will include no identifying device, signature or number so that the confidentiality of your child's reply will be completely secure.

Please check the appropriate box signifying your approval or disapproval of this request, sign the form in the space provided below and return in enclosed envelope.

____ Approve

____ Disapprove

____ Parents Signature

____ Date

* Note: Researcher should substitute his own pertinent material for the material in parentheses.

Parental permission must be sought by researcher in order to inspect pupil records, administer questionnaires, hold interviews, administer tests, etc.

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NEW YORK'S FIRST SCIENCE HIGH SCHOOL

FOUNDED 1904

STUYVESANT HIGH SCHOOL

345 EAST 15th STREET, NEW YORK, NEW YORK 10003

GASPAR R. FABBRICANTE
Principal

ORegon 3-9030

December 4, 1975

Dear Mr. Gelernter,

I am a senior in Stuyvesant High School and a member of the Stuyvesant Voice.

I am writing an article on "Sexuality in Stuyvesant". Enclosed is a worksheet that I wish to distribute to my researchers (seven students). The researchers will interview a cross section of the Stuyvesant student population.

I would like to stress certain points mentioned in the worksheet. All interviews will be used without the written consent of the student and/or parent.

The students who I have chosen to research are of a certain breed. They possess a certain sensitivity. Most were involved in the Peer Information Group and received special training in dealing with students and their problems.

The article itself, will not be a statistic-ridden study. It will be a sensitive, human evaluation and in some cases interpretation of the Stuyvesant students' ideas and understanding of human sexuality, as outlined in the worksheet.

Finally, this worksheet is merely a correspondence between myself and my researchers. The questions suggested are only suggestions and I expect them to be deviated from. Most importantly, no one will be forced to answer a question. The interview is voluntary.

I have anticipated objections to the first three questions and have written alternatives.

1). "Recently homosexuality has become more widely spoken of and understood. What are your ideas on homosexuality and bisexuality as opposed or in respect to heterosexuality? Would you object to homosexual or bisexual people in places of authority?"

2) The institution of marriage has been questioned specifically by the "youth of America" or the students of Stuyvesant. Do you feel marriage is outdated? Can you suggest alternatives? Eg. - living together? Does pre-marital or "sex out of wedlock" offend you in any way?

EXHIBIT "B"

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NEW YORK'S FIRST SCIENCE HIGH SCHOOL

FOUNDED 1904

STUYVESANT HIGH SCHOOL

345 EAST 15th STREET, NEW YORK, NEW YORK 10003

GASPAR R. FABBRICANTE
Principal

ORegon 3-9030

3) With the world population growing at an everincreasing rate, sufficient food, land and natural resources to support humanity are becoming harder and harder to obtain. One solution that has been suggested is birth control. Do you feel contraception has a place in our society? Abortion? Are you aware of the different types of contraception and how they affect the human body?

I anxiously await your approval.

Thank you.

Sincerely yours,

Robert A. Marks

Robert A. Marks

*be confidential and no names will be used without the written consent of the student and/or parent.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

76 Civ. 3845

Plaintiff,

- against -

IRVING ANKER, et. al.,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

GILBERT M. TRACHTMAN, Ph.D., being duly sworn, deposes and says:

1. I am one of the plaintiffs in this action, being the father of JEFF TRACHTMAN, a minor. I make this affidavit in support of the plaintiff's application, based not upon my paternal affection for my son but upon objective and professional expertise as a practicing psychologist.

2. I am currently professor of educational psychology, director of the school psychology program and director of the children's consultation service at New York University and am licensed in the State of New York as a psychologist and certified as a diplomate in school psychology and am a fellow of the American Psychological Association. I am a past-president of the Nassau

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County Psychological Association and of the School Division of the New York State Psychological Association and am currently president of the School Psychology Educators Council of New York State. I have served as consultant to school districts in Nassau and Westchester counties and in New York City and supervise school psychology trainees serving in public and private schools in the metropolitan area.

3. I have objectively reviewed the questionnaire proposed for the article on "Sexuality in Stuyvesant". I emphasize that it is not only relevant and germane to the interests and concerns of students in the 13-18 year age range, but can affirm from personal and professional experience that every question listed touches upon topics frequently occurring in day to day conversations among students in this age group and no question could be unexpected, arcane or upsetting to students who associate in any manner with their peers, whose discussions will perforce include adversions to sexual issues.

4. The administration of Stuyvesant High School has, in the past, offered rap groups on sexuality to its students and encouraged participation in these open-ended, face to face verbal discussions. While these groups may have been led by trained teachers, they nevertheless exposed students to a degree of peer pressure and verbal confrontation far in excess of any impact created by a

voluntary and anonymous written questionnaire. This statement in no way constitutes a criticism of peer rap groups, which are to be applauded, but is meant to place in proper perspective the mild impact of the projected questionnaire, which is considerably less invasive of personal privacy and much less likely to arouse anxiety.

5. For those youngsters who have already discussed sexual matters freely with peers, the questionnaire will have little or no impact. Those youngsters who have not participated freely in such discussion are quite likely to be reserved, shy or already anxious about sexual matters and therefore unwilling to share information and attitudes with peers. Such youngsters are likely to be less informed, to have less access to current relevant peer group norms and attitudes and to be anxious about themselves on the basis of misinformation, distortion or fantasy. For such youngsters the questionnaire may serve as an outlet for private communication, and a reassurance that others are concerned about similar matters, and the projected article based on this questionnaire may well serve a valuable educational purpose in reducing fantasy and distortion and relieving anxiety.

6. Youngsters of this age, living and travelling in an urban environment are constantly bombarded by sexually-laden stimuli.

The media -- advertising, newspaper reports, TV drama, film, theatre -- are constantly dealing with homosexuality, unisexuality, bisexuality, premarital sex and all of the other topics covered in this questionnaire. Walking to and from school, youngsters meet prostitutes, are handed advertisements for massage parlors, and witness homosexual courtships. The defendants seem to assert that some of the questions in this questionnaire may arouse undue anxiety in some youngsters who are less well defended or whose personality adjustment is somewhat precarious. I would suggest that any youngster sufficiently fragile to suffer serious anxiety or depression upon reading questions which (s)he may ignore with impunity or respond to anonymously, is a youngster too fragile to have survived the trip from home to school. There is absolutely no evidence that the impact of this questionnaire will even remotely approximate the impact of all the sexually laden environmental stimuli already imposed upon these youngsters.

7. While psychologists and psychiatrists have much to contribute to the ex post facto understanding of behavior, the state of the art is such that we are still notoriously poor at predicting behavior. Accurate prediction is difficult because of complexity of behavior and of the forces (internal as well as external) which interact to shape behavior.

We are able to deal only with broad probabilities, based on our understanding of personality and behavior. On this basis, in

its given context, it is highly improbable that the survey in question will place students at risk.

8. Behavior can be understood, broadly, to result from the interplay between personality and environment (in research studies, sometimes characterized as trait-situation, or aptitude-treatment interactions).

The personality of the individual refers to the pattern of traits which characterize that individual (including values, abilities, motives, defenses, temperament, personal style) and which leads to some tendency to perceive and to react to stimuli uniquely and somewhat consistently. An individual defensive style refers to characteristic modes of coping with stimuli (internal or external) which are anxiety provoking or perceived as threatening to the self. While many different defense mechanisms or defensive styles have been identified, most can be broadly characterized on an approach-avoidance continuum. That is, coping with a perceived threat by involvement of some sort, or by escape or denial of some sort.

9. The environment in the context in which the questionnaire at issue will be used, is an urban (New York City) high school in 1976. A school, as noted, situated in a city which bombards its

inhabitants with sexual stimuli. Sexual stimuli, which include all topics covered in the proposed survey and extending quite beyond it. Indeed, recent research, "Adolescent Sexuality in Contemporary America", Sorenson, R. C., 1973, N.Y.: World Publishing Co., indicates that sexual behavior is on the upswing among adolescents and that young people are increasingly explicit about sex.

The proposed survey is not only projected within this environmental context but, in turn, is an additional component within the environment. It is pertinent, therefore, to note the relevant characteristics of the questionnaire, and the manner of distribution of the proposed survey:

(1) It is voluntary; (2) it requires a written (and therefore private) communication, rather than a verbal (and public) communication; (3) it is anonymous; (4) a proposed cover letter outlines all of the above and further encourages the volunteer respondents to ignore any specific questions which make them uncomfortable.

10. How, then, may we expect the above-described personal and environmental factors to interact? What behavior can be predicted? It should be expected that the vast majority of students would be interested in the results of this survey. Many will freely and easily respond, and await the results with interest. Others may be too busy or too lazy to respond, but will probably

be interested in the results. Some students may be expected to be conflicted or troubled by sexual matters such as are touched on by this survey. Sexual attitudes and behavior are, of course, an integral part of the adolescent's overall psychological and behavioral development. Thus, when sexual conflicts are evidenced, they usually are representative of more general psychological conflicts. Each youngster will have developed characteristic ways of dealing with conflict and anxiety. Some, who characteristically handle conflict by avoidance, repression or denial, will avoid any involvement with the survey; they will discard it without reading beyond the cover letter, or they will forget or lose it. Others, too conflicted to communicate easily with their peers, but who deal with their conflicts by seeking more information, or who ruminate and obsess privately about their conflicts, may welcome the opportunity to match their anonymous responses with those of their peers, to gain information which has not been freely available to them because of their reticence.

11. In summary, it would seem likely that every youngster will deal with the survey in his/her characteristic style; its anonymity and voluntary nature will allow untroubled youngsters to respond or not respond -- freely, and will allow troubled youngsters to respond or not respond as their particular characteristic defensive systems dictate.

12. It would appear that defendants' cause for concern is that the proposed survey is seen in some way to pose a greater threat to the personality structure and defensive systems of students than the impact of all of the sexually laden environmental stimuli already imposed upon the students. I would repeat that any youngster sufficiently fragile to suffer serious anxiety or depression upon reading questions which (s)he may ignore with impunity or respond to anonymously, is a youngster who is at once too fragile psychologically to have survived the daily trip from home to school.

13. It is more probable that the projected survey and ensuing article would have a salutary effect on youngsters who might be coping with sexual conflict. For those who need to avoid or deny, the survey is not invasive, and they may and will continue their avoidance. For others, however, the article offering current data about their peers, may well serve a valuable educational purpose in providing access to information about relevant peer group norms and attitudes which may serve to reduce fantasy and distortion and relieve anxiety.

14. Accordingly, it is my professional opinion that the distribution of this questionnaire and the subsequent article constitute a potentially meaningful contribution to the education and well being of fellow students that should be supported and

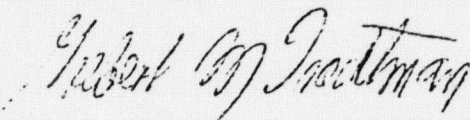
encouraged by the school administration, not prohibited.

15. It is therefore requested that the relief sought by the plaintiffs should be granted.

Sworn to before me this
11 day of November, 1976



Notary Public



GILBERT M. TRACHTMAN, Ph.D.

State of New York
County of New York
SWORN TO BEFORE ME

THIS 11 DAY OF Nov 1976

MELVIN GOLDSTEIN
Notary Public, State of New York
No. 20-1654-800
Qualified in Nassau County
Term Expires March 31, 1977

7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

76 Civ. 3845

Plaintiff,

- against -

IRVING ANKER, et. al.,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HARRY B. GILBERT, being duly sworn, deposes and says:

1. I make this affidavit in support of the plaintiff's application to enjoin and restrain the defendants from interfering with the distribution of the proposed attitudinal survey by way of questionnaire on Sexuality in Stuyvesant, the results of which are to be published in the student periodical, The Stuyvesant Voice.

2. I am a licensed psychologist, a diplomate in clinical psychology of the American Board of Professional Psychology, and a fellow of the Division of Clinical and School Psychology of the American Psychological Association. At present I am a professor of education at Fordham University and a coordinator of the Urban

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School Psychology Program. From 1955 through 1966, I was a member of the Board of Examiners of the New York City Board of Education, and I was in charge of examinations for licensing school psychiatrists, school psychologists, social workers and guidance personnel seeking positions in the New York public schools. Prior to that I had been a supervisor of psychologists at the Bureau of Child Guidance.

3. I see the survey project and questionnaire here at issue as a classic example of adolescents' reaching out for information and relief of concern in an area of great developmental moment to them. Adolescents are most interested in their newly developed sexual abilities and their inability to achieve expression of their interests and desires. Quite appropriately, there are legitimate reasons why sexual expression is difficult to achieve for young adolescents. But society makes the problem even more difficult by its failure to explore the extent of sexual knowledge, attitudes, practices and concerns among teenagers and to make provision for the sharing of such findings among teenagers in order to allow alleviation of anxiety that is prevalent.

4. In this instance, we see that two students are attempting to conduct a survey among their schoolmates to determine knowledge and attitudes and to share their findings. They submitted

the proposed questionnaire and cover letter to school officials. What a golden opportunity to work with the students, perhaps to modify the questionnaire (shortening it would be desirable), and certainly to make provisions for suitably conducted group guidance lessons ^{on} in the results. Thus, any possible anxiety could be handled by guidance personnel trained to work with groups.

5. The danger that some students might be exposed to anxiety arousal exists. But it is so minute compared with the enormous benefit to be derived from students learning that their concerns are common and developmentally normal. Moreover, this would provide opportunity for genuine information to be shared and not leave sexual information to be gained solely from furtive peer whisperings or pornographic literature which does abound.

6. An effect of squelching this student proposal can only serve to drive sexual feelings further underground and to provide adolescents with a cause to do battle with authority figures who treat students as children, not budding adults.

7. I conclude from my review of the cover letter of the questionnaire that it shows appropriate concern for the consent of the surveyed population. It is well couched with the right sensitivity.

Sworn to before me this
12 day of October, 1976

Richard M. Sichel
Notary Public

RICHARD M. SICHEL
Notary Public in the State of New York
No. 60-5934900
Qualified for Westchester County
Commission Expires March 30, 1977

Harry B. Gilbert
HARRY B. GILBERT

000103

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

76 Civ. 3845

Plaintiff,

- against -

AFFIDAVIT

IRVING ANKER, et. al.,

Defendants.

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

MAX SIEGEL, being duly sworn, deposes and says:

1. I am a professor of education and program head at the Graduate Program of School Psychology at Brooklyn College of the City of New York. I am responsible for the training of school psychologists in the School of Education at Brooklyn College. I also serve as Clinical Professor of Psychology and Supervisor of Psychotherapy at the Post-Doctoral Program in Psychotherapy of Adelphi University. I am certified by the American Board of Professional Psychology and Clinical Psychology and past president of the New York State Psychological Association and of the Division of Psychotherapy of the American Psychological Association. I

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presently serve as president of the Division of Clinical Psychology of the American Psychological Association, and as a member of the Board of Directors of the Association.

2. I have reviewed the questionnaire proposed to be utilized in gathering information for an article on "Sexuality in Stuyvesant" for publication in the Stuyvesant Voice. My review and resultant professional opinions are my own and are given in none of my official capacities.

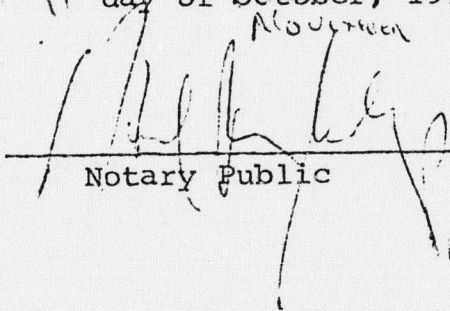
I find no questions or topics eliciting response in the questionnaire which would not occur spontaneously as topics of conversation among adolescents of high school age. Given that the questionnaire is voluntary and anonymous so that a student may choose not to participate without embarrassment or concern for peer pressure, there seems to be no basis for any expectation of emotional harm to individual students.

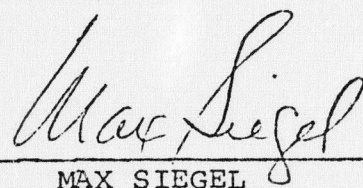
Indeed, I would conclude that the questionnaire and the resultant article may prove a valuable service and fill an important need for the students of Stuyvesant High School, providing them as it does with normative and demographic information which can play a valuable role in providing reality based contexts for discussion in areas of sexuality. Most adolescents discuss sexual issues

frequently, and those who do not enter such discussions frequently are nevertheless quite likely to obsess and ruminate privately about these same issues, but with less facts and less information about their fellow students, and with consequent possibilities of more fantasy and more distortion, and, as a consequence, irrational anxiety. It is much more likely that collection and dissemination of relevant facts and attitudes from peers will prove to be constructive and useful than in any way harmful.

3. I cannot based on my professional experience, conclude that any kind of harm to students of high school age will be visited upon them were the plaintiff permitted to distribute the proposed questionnaire, and were the interpreted results published in the student periodical at the high school, on the contrary, I consider this a most helpful and useful kind of instrument in contemporary society.

Sworn to before me this
11 day of October, 1976

Alouyruen

Notary Public


MAX SIEGEL

HOWARD R. SCHLIMMER
NOTARY PUBLIC, STATE OF N.Y.
NO. 41-350350
JESSIE COURT
JAMES T. BARRY, Esq.
JAMES T. BARRY, Esq.
JAMES T. BARRY, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

Plaintiff,

76 Civ. 3845

- against -

IRVING ANKER, et. al.,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

VICTOR B. ELKIN, being duly sworn deposes and says:

1. I make this affidavit in support of the plaintiff's application to enjoin and restrain the defendants from interfering with the distribution by students to other students at Stuyvesant High School of a questionnaire to be used in a survey on Sexuality in Stuyvesant, the results of which are to be published in a student periodical, The Stuyvesant Voice.

2. I am a certified school psychologist as well as a psychologist licensed in that capacity by the State of New York. For more than 20 years I was director of psychological services for the Long Beach City School District, during which time and for a period of

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three years, I served as director of Pupil Personnel Services. I am currently the director of the National Institute of Mental Health Project - Psychology in the schools.

I am past president of the Nassau County Psychological Association, a founding member of the Nassau County Mental Health Association, and I presently serve as a member of the Board of the New York State Psychological Association - School Psychology Division.

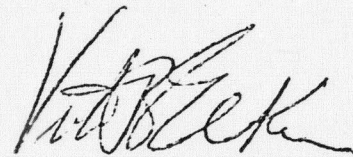
3. I have reviewed the proposed cover letter and questionnaire to be presented to the students of Stuyvesant High School, and, in my opinion, find nothing objectionable or inappropriate in its distribution to high school students. As the result of my 25 years of direct service to public school children, I have become sensitive and aware of the need to appropriately respect and effectively relate to the children in our schools. Not only do I not find this questionnaire objectionable or dangerous, but actually I find it to have positive mental health implications. In today's day and age, with sexuality ramptantly used in advertising, entertainment, in literature, the questions presented in this questionnaire are actually benign.

4. For many young boys or girls of high school age, such a questionnaire could serve as a positive impetus for facing and

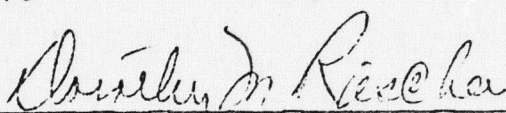
coming to grips with many issues regarding their own personal thoughts and feelings about themselves, within a sexual context. Very much like the cliché, that it is healthier for the child to learn about sexuality from a parent rather than "in the street", it is although healthier for a child to learn about or become in touch with his or her own thoughts and feelings, and even anxieties from a questionnaire which might stimulate thinking, rather than from headlines and various magazines, newspapers, or the screaming announcements of theater marquees.

5. I think this questionnaire is a positive effort in the approach toward open discussion within the area of sexual development.

Sworn to before me
this 8th day of November,
1976



Victor B. Elkin


Notary Public

DOROTHY M. PASCHEN
NOTARY PUBLIC, STATE OF NEW YORK
101 JAMES ST.
CHATEAU HILL, ALBANY COUNTY
Commission Expires March 30, 1977

NOTICE OF ENTRY

Sir:—Please take notice that the within is a (certified)
true copy of a
Judy entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

BERGER, KRAMER & SUGERMAN

Attorneys for

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) Walker 5-7421

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

BERGER, KRAMER & SUGERMAN

Attorneys for

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) Walker 5-7421

To

Attorney(s) for

Index No. Civ. 3845

Year 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, ETC.,

Plaintiffs,

—against—

IRVING ANKER, ET AL.,

Defendants.

AFFIDAVIT

BERGER, KRAMER & SUGERMAN

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) Walker 5-7421

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and By His
Father, GILBERT M. TRACHTMAN, on Behalf
of JEFF TRACHTMAN,

CIVIL ACTION NO.
76 Civ 3845

Plaintiff,

-against-

IRVING ANKER, Individually and in His Capacity as Chancellor of New York City Public Schools; SANFORD GELERNTER, Individually, and as Administrator of Student Affairs, Office of Student Affairs, Office of High Schools, Board of Education of the City of New York; GASPAR FABRICANTE, Individually, and as Principal of Stuyvesant High School, and; THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

SANFORD GELERNTER, being duly sworn, deposes and says:

1. I am the Administrator of Student Affairs employed by the Office of High Schools of the Board of Education of the City of New York. The Office of High Schools is under the supervision of Samuel Polatnick and is responsible for the administration of high schools within the City School District including Stuyvesant High School.

2. By letter of December 4, 1975 (copy attached as Exhibit "A") from one ROBERT A. MARKS, I received a request to approve a proposed research survey to be conducted by students at Stuyvesant High School. Attached to the letter was a copy

of the proposed survey (copy attached as Exhibit "B"). The interview was to be conducted orally. Included among the instructions to interviewers were:

"The questions below are suggestions. Phrasing may be changed, and will have to be, in many cases. You may also add questions before and during the interview. Use your imagination ... Finally, try to interview a cross-section of the school; the liberal, the redneck, the 'slut', the virgin, the hippie, the MCP, the feminist, etc..."

By letter of December 17, 1975 (copy attached as Exhibit "C"), I denied ROBERT A. MARKS permission to conduct the oral survey.

3. My reasons for denying MR. MARKS permission to take the survey were numerous and detailed. I made no attempt to set forth all of them in my letter of December 17, 1975 (Exhibit "C"). My statement that "High School students may not conduct a survey on sexuality" was made in response to his proposal for a specific oral survey. The content, form and methodology of that survey was highly improper and would have imposed a risk of substantial harm to the students surveyed. The primary function of the Board of Education is to provide an adequate education for the students who are required by state law to attend our schools. Any proposed activity which seeks the official approval of school authorities must serve an educational purpose. Further, that activity must not infringe upon the privacy rights of other students and their parents. Additionally, like any other pedagogical activity, a proposed survey should be evaluated critically and must meet accepted standards of achievement. Without uniform standards to apply, the Board of Education would be inundated with a deluge of

surveys, most of which might be without meaningful purpose.

The art of conducting a research survey is a highly sophisticated one. Professionally accepted standards are in existence concerning content, form and methodology. The Board of Education's Office of Educational Evaluation has developed uniform standards applicable to those wishing to conduct research involving New York City school personnel or records. (See Handbook for Research Applicants, Cooperative Procedure Governing Research Proposals, a copy of which is attached as Exhibit "D"). The application of reasonably drawn professional standards of discipline does not rise to a first amendment question. The issue is not censorship. In fact the dispute surrounding the survey has been covered in detail in the school newspaper. (See Exhibit "K" below). Neither is the subject matter of the survey the major concern of the Board of Education. If the survey in question had been conducted privately (without the use of school facilities and the involvement, or approval of school personnel) the results could be published in the school newspaper. It is the impact of conducting such a survey and the possible harm to students that is the primary concern of the Board of Education. The issue is not prudishness or fear of discussing sexuality. Sexuality is discussed openly and frankly in classes on "Family Living and Sex Education" (see excerpts from curriculum attached as Exhibits "E", "F" and "G",

as well as May 1974 and January 1976 "Guidelines", Exhibits "H" and "I") and in various portions of required Health Education (see Exhibit "J") and Biology courses. An official Stuyvesant school newspaper carried front page stories on the survey and reprinted some of the questions from the survey (copies attached as Exhibit "K").

Significant differences between the survey and the "Family Living" course are the requirements for trained teachers and the right of parents to remove students from the course.

Of specific interest in the Family Living Course "Guidelines" is the following directive:

"8. Surveys

Teachers, college students, or persons from agencies shall neither administer nor participate in surveys eliciting responses about personal sexual behavior from students. Such sex-behavior inventories, as all other health-related surveys, must receive prior approval from the Board of Education through its Coordinating Council on School Health. [emphasis added] (page 3 of Exhibit "I").

It should also be pointed out that this case in no way involved expulsion or suspension of any student.

4. After evaluating the survey presented to me by MR. MARKS in light of the aforementioned Handbook for Research Applicants (Exhibit "D") and my knowledge of survey techniques, I found the survey deficient in the following areas:

A. Lack of Anonymity - Objectivity:

Anonymity of participants was impossible inasmuch as there was to be a 20 to 30 minute interview conducted by the student "researcher" with an individual who was also a student in the same school. The interviewer was apparently to seek out

known students - "the liberal, the redneck, the 'slut' ----" That the author of the survey could categorize people in those terms, and use those terms in instructions to "researchers" denies all possibility of scientific or objective procedures. It speaks of preconceived notions and prejudices on the part of the author of the survey and casually identifies students in a highly derogatory way. The survey proposal gave no indication as to how confidentiality would be preserved.

B. Lack of Parental Consent:

The make-up of the student body at Stuyvesant includes over 389 ninth-year students, including thirteen-year olds. The Handbook for Research Applicants (Exhibit "D") requires prior written parental consent for all surveys involving students. The survey in question provided that: "names will not be used without parental consent." There was no indication that parental consent would be required for all those participating in the survey. Parents send their children to public schools expecting that their children will engage in the known and approved curricular and extra curricular activities. Schools develop materials and programs to keep up with the times and the growth of knowledge. Programs such as Family Living and Sex Education, and the Peer Discussion Groups were developed in response to such needs. However, school administrators are sensitive to the rights of parents and students to have a say on materials and programs that significantly deviate from the normal operations of a school. We are

sensitive to the need to prevent initiation of an activity that cannot be controlled by professionals, (as is our legal responsibility). A survey on sexuality, conducted by students ignorant of survey techniques, without the wisdom or experience in dealing with intense student emotions is inappropriate for a school. At a minimum, parents should have an opportunity to reject the peer group pressures on their children to respond to such a survey. To do otherwise would be an invasion of their rights of privacy.

C. Lack of Educational Purpose:

The survey lacked a stated aim or goal. It was not being conducted to further knowledge or learning in any way but rather merely to reflect a popularity poll on sexual morals.

D. Improper Drafting:

The questions were not designed in such a way as to enable the researcher to gather needed statistical information. The questions were poorly designed and could cause considerable psychological harm to insecure youngsters.

5. It has been brought to my attention that the survey ruled on by the Board of Education, in its decision of February 24, 1976, is substantially different from the oral survey presented to me by MR. MARKS' letter of December 4, 1975. I have never been requested to rule on the written survey considered by the Board of Education. On information and belief, nor at any time prior to the commencement of this litigation did plaintiff seek approval for a revised survey from the High School authorities of the Board of Education.

Sworn to before me this
16th day of November, 1976.

Elaine Ann Kovessy

Sanford Gelernter
SANFORD GELERNTER

ELAINE ANN KOVCESSY
Notary Public, State of New York
No. 432185915
Qualified in Richmond County
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and By His
Father, Gilbert M. Trachtman, on Behalf
of JEFF TRACHTMAN,

CIVIL ACTION NO.
76 Civ 3845

Plaintiff,

- against -

IRVING ANKER, Individually and in His
Capacity as Chancellor of New York City
Public Schools; SANFORD GELERNTER,
Individually, and as Administrator of
Student Affairs, Office of Student Affairs,
Office of High Schools, Board of Education
of the City of New York; GASPAR FABRICANTE,
Individually, and as Principal of Stuyvesant
High School, and; THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Defendants.

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

ANTHONY J. POLEMENI, being duly sworn, deposes and
says:

1. I am the Director of the Office of Educational
Evaluation of the Board of Education of the City of New York. A
description of my duties in that position and my qualifications is
included in my resumé (attached as Exhibit "A"). Included among my
duties are the Supervision of Research and Evaluation and the approval
of requests to conduct research studies in the public schools.

2. Under my supervision, the Handbook for Research
Applicants, Cooperative Procedures Governing Research Proposals
(copy attached as Exhibit "B") is prepared "as a guide to agencies
and individuals desiring to conduct research involving New York City
school personnel or records". (Foreword, Exhibit "B"). The substance
of the Handbook is identical to that in effect throughout the period
which is the subject of plaintiff's complaint. (See Handbook dated

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March, 1972, attached as Exhibit "C"). Two of the criteria used in evaluating proposed research projects are:

1. The study must show promise of educational value.

. . .

3. It is contrary to the policy of the Board of Education to permit inquiry of school personnel (supervisors, teachers, or students) regarding age, home address, occupation, education, financial status, marital status, ethnic or religious status or similar questions which might invade the privacy of the individual [emphasis added].

Accordingly, Rule No. 9 (Page 3 of Exhibit "E" dealing with Qualified Agencies) and Rule 12 (Page 7 of Exhibit "B" dealing with individuals) require prior written parental consent.

3. Upon information and belief, in January 1976 an appeal was made to the Board of Education concerning a proposed research survey entitled "Sexuality in Stuyvesant" (copy attached as Exhibit "D"). When the appeal was brought I was asked by the Board of Education, in my capacity as the Director of the Office of Educational Evaluation, to review the questionnaire in terms of applicable Board of Education policy, rules and regulations relating to the conduct of research surveys. My review of the questionnaire was based upon the regulations set forth in the Handbook for Research Applicants previously referred to (see Paragraph 2 above), Board of Education policy and my professional expertise in the area of research surveys. My review was not conducted to determine whether or not a proposed student article would be appropriate for publication in a school newspaper and therefore was not concerned with plaintiff's right of "free speech." It also did not deal with an "obscene" matter. Rather, I was asked to apply professionally accepted research standards to a proposed research survey. In applying those standards one must consider the possible impact on the subjects of the study. In conducting such an evaluation, the rights to be considered are the privacy rights of the high school students of Stuyvesant whose age runs as low as thirteen. Anyone wishing to conduct a research survey which asks a thirteen year old questions such as:

15) Do you consider yourself a heterosexual _____,
homosexual _____ or a bisexual _____?

or

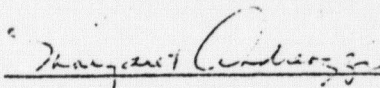
20) What is the extent of your sexual experience?

must consider the impact of the question on the student and at the very minimum make provision for survey conditions that include absolute anonymity and the presence of a trained professional. My review indicated that the questionnaire and the proposed method of administering the questionnaire did not meet the applicable standards governing research surveys. My written findings were submitted to the Board of Education for their consideration (copy attached as Exhibit "E").

4. The survey, as presented for review by the Board of Education did not meet acceptable standards relating to surveys of students and the survey presented significant possibility of violating the privacy of students and having harmful consequences to the students who would be the subject of the survey.

Sworn to before me this
16th day of November, 1976


ANTHONY J. POLEMENI



Notary Public
State of New York
No. 34-20,792-1
Qualified in Kings County
Expiration Expires 11/01/78

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EXHIBIT

"E"

Review of Questionnaire

"SEXUALITY IN STUYVESANT"

Anthony J. Poleremi, Director
Office of Educational Evaluation
New York City Board of Education

EXHIBIT "E"

000120

Review of Questionnaire
"SEXUALITY IN STUYVESANT"

GENERAL COMMENTS

1. It is my understanding that, except under highly controlled conditions, the use of questionnaires involving items of a personal nature, such as sex, is contrary to Board policy, as they may constitute an invasion of privacy. In the case of the Stuyvesant student questionnaire, privacy rights both of parents and of students may be violated.

One may cite, as a single example of legislative concern in this area, the Congressional investigations chaired by Sam Ervin, into uses of the MMPI and similar instruments, whose content touch upon intimate questions of sexuality and other sensitive areas.

The argument that responding is voluntary may not hold in this case, as the impact of peer pressure during the adolescent years is a known factor in psychological situations which are as confined as a single school environment.

2. It should be noted that the mere statement of anonymity is not in itself a guarantee to the participant, especially in the intimate conditions of a single school. Handwriting, typewriter faces, personal styles in uses of inks, and a score of other details can reveal the identity of a respondent to those not schooled in or bound by the ethics codes of professional researchers. There is no indication in the material submitted that a responsible and appropriately trained adult will supervise the processing of these questionnaires. For the inexperienced, however well-intentioned, the hazards of revelations are too serious to be ignored.

3. Cui bono? Why is this questionnaire being circulated? Since, as is described, it is to be distributed to a "random" sample of Stuyvesant students and is being circulated by the school newspaper, one is faced by significant questions.

- a. Is this to be a scientific study, with its implications of random sampling, and therefore to represent the entire student body? If so, it should be conducted under carefully controlled conditions and supervised by a competent psychologist or research person. And if it is to be a scientific study, the question is: Why is it being conducted? What useful information will it add to the scientific literature? What are the research credentials of those who will conduct the study? Although Mr. Marks' letter to the participants reflects a thoughtful concern

and highly responsible attitude on the subject, these qualities are not sufficient for the conduct of a survey of this type, which will reflect on an entire school population. Even the most highly trained research personnel, with impeccable credentials, approach such surveys with utmost care and maximum precautions. It is highly doubtful that a high school student can have the training required for appropriate analysis of such materials.

- b. As a journalistic inquiry, one must ask whether this is not merely a ploy to satisfy the prurient curiosity of adolescents, and is a school newspaper the appropriate vehicle for such activity? Would publication of such data, imprecise as it must be, reflect on students whose opinions are not represented and who may feel that their privacy has been violated?

4. The age ranges of the students to be sampled is an extremely important consideration. Some may be as young as thirteen. Others, who may be older, may be in earlier stages of adolescence. Some of the questions being asked may be psychologically harmful to the immature mind. For example, items 13 (uses of contraceptives), 15 (heterosexuality, homosexuality, bisexuality), 18 (masturbation), and 20 (sexual experience). Questions such as these can be posed only by highly skilled and trained personnel, if at all. It is doubtful that parents would approve such probing, whether voluntary on the part of their children or not. The peer pressure involved in providing a response or even having the question posed could lead to serious conflict or anguish for a young and "sexually innocent" child. One may not cite the rule of the majority in such cases. For, ethically, one does not undertake a non-critical survey which may, even remotely, create psychological trauma for even one person. The code of ethics of the American Psychological Association is quite clear on this, as are the policies of research sponsoring agencies of the federal government.

As administrators of a school system, we are obliged to protect all children (minors, legally) in our care. Acting in loco parentis, we cannot permit acts that we know, professionally, may be damaging or offensive to our charges.

5. Some items are questionable on moral or religious grounds, in that they conflict with beliefs of certain groups, e.g., item 10 (institution of marriage), item 11 (pre-marital sex), item 12 (contraception), item 13 (uses of contraceptives), items 14, 15, 16 and 17 (homosexuality, heterosexuality, and bisexuality), item 18 (masturbation), item 19 (abortion), item 20 (sexual experience). Raising such questions in the mind of a minor, except under conditions of therapy, may create serious conflicts and may, in certain conditions, be traumatic for the child. Parents may be justly concerned.

TECHNICAL COMMENTS

The structure of the items is not appropriate for accurate summation and analysis. Unless carefully edited and refined, responses will be ambiguous in their meanings. This is especially true of the open-ended questions, but applies to several with alternative responses as well.

SUMMATION

Permission for the use of this survey is denied by the Office of Educational Evaluation for the following reasons:

- a) The survey instrument is inappropriate and
- b) The study is contrary to Board of Education policy.

Respectfully submitted,



Anthony J. Polemeni
Director

Office of Educational Evaluation
New York City Board of Education

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and By His
Father, Gilbert M. Trachtman, on Behalf
of JEFF TRACHTMAN,

CIVIL ACTION NO.
76 Civ 3345

Plaintiff,

-against-

IRVING ANKER, Individually and in His
Capacity as Chancellor of New York City
Public Schools; SANAFORD GELERNTER, Indi-
vidually, and as Administrator of Student
Affairs, Office of Student Affairs, Office
of High Schools, Board of Education of the
City of New York; GASPAR FABRICANTE, Indi-
vidually, and as Principal of Stuyvesant
High School, and; THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK,

Defendants.

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

JACOB ABRAMSON, being duly sworn, deposes and says:

1. I am a School Research Assistant in the Office of Educational
Evaluation of the Board of Education. Attached as Exhibit "A" is a copy of
my resume.

2. During the 1975-76 school year students known to me as
Jeff Trachtman and Robert Marks were referred to me by the high school
division for assistance. The students in question wished to conduct a survey
on "Sexuality in Stuyvesant".

3. I offered advice to the students on how to create a survey which
would meet professional standards. I indicated to them that anonymity and
parental consent would be required. I also gave them a book containing approved
questionnaires in the area of "Family Living, Including Sex Education" for
them to use as a model (copy of model questionnaire attached as Exhibit "B").
The students never contacted me for further assistance.

Jacob Abramson
JACOB ABRAMSON

Sworn to before me this

16 day of November, 1976

Joel W. Gellar

JOEL W. GELLAR
Notary Public, State of New York
No. 24-523163
Qualified in Kings County
Commission Expires March 20, 1978

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and by
his father, GILBERT M. TRACHTMAN,

Plaintiffs,

-against-

IRVING ANKER, individually and in his
capacity as Chancellor of New York
City Public Schools, SANFORD GELERNTER,
individually and as Administrator of Student
Affairs, Office of Student Affairs, Office
of High Schools, Board of Education of the
City of New York; GASPAR FABRICANTE, indi-
vidually and as Principal of Stuyvesant
High School and JAMES REGAN, ISAIAH
ROBINSON, STEPHAN AIELLO, AMELIA ASHE,
JOSEPH BARKAN, and ROBERT CHRISTEN,
constituting THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK,

Defendants.

:
:
: AFFIDAVIT IN
: OPPOSITION
: TO APPLICA-
: TION FOR DE-
: CLARATORY AND
: INJUNCTIVE
: RELIEF

: 76 Civ. 3845
: (CBM)

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

FLORENCE HALPERN, Ph.D., being duly sworn, deposes

and says:

1. I am a Psychologist, licensed in that capa-
city by the State of New York. I am presently a Clinical
Professor at the New York University School of Medicine. I
was also Project Director for the Department of Health,
Education and Welfare's development of Mental Health Guide-
lines for Title XIX programs. Among other honors, I am the
recipient of the Dorothy Hughes Award for the Achievement in
Educational or School Psychology. I have also written numer-
ous publications dealing with the mental health of children.
Attached is a copy of my resume which I feel will establish my
experience. It is with this background that I have reviewed
the survey on "Sexuality In Stuyvesant".

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2. I have agreed to submit this affidavit without fee to the defendants because I consider the questionnaire developed by the students of Stuyvesant High School improper for distribution. I feel that distribution is, in some instances, likely to prove detrimental and even harmful.

3. While I cannot attest with certainty that harm will result from the distribution of the survey, it is my expert opinion that emotional and psychological harm is likely to occur and the chance of this happening is far greater than the possibility that no children will be injured if it were distributed.

4. While many teenagers are quite knowledgeable and sophisticated in regard to sex, there are many other adolescents who are not. Still others are shy and sensitive in relation to any discussion regarding sexual matters and are most anxious about the whole area of sex.

5. Reading the questionnaire and thinking of answers to many of the queries would be very likely to stir up questions, doubts, fantasies and anxiety, resulting in impaired school performance because of sexual preoccupation, sleeplessness, heightened feelings of self-doubt, depression, and in some instances, even more disturbing reactions.

6. In a student population, upon information and belief, of between 2500-3000 children, there are almost certainly some children who have achieved only a very brittle adjustment. Their ability to maintain equilibrium and go along in the more usual ways is tenuous. For such adolescents, the questionnaire might well be the force that pushes them into a panic state or even a psychosis.

7. Even among students who may be more sexually mature, the questionnaire is very likely to generate increased preoccupation with sexual matters that have not previously concerned them (such as homosexuality) which they may not be equipped to handle.

8. In some cases responding to the questionnaire might result in increased and/or unnecessary conflict with parents where there is parental objection to the survey on religious or moral grounds. Also parent-child conflicts may result in those instances where the attitudes of the child differ with those of the parent.

9. I also have strong concerns about the inability of the surveyors to insure that the answers are kept confidential.

10. In summary, I feel that the distribution of this survey by untrained students to the student body of Stuyvesant High School, many of whom are undoubtedly sexually immature, is an act that is potentially dangerous and is likely to result in serious injury to at least some of the students. Plaintiffs have made no provision to alleviate the anxieties or depression that may result from the survey's dissemination.

11. Accordingly, it is my expert opinion that defendants acted properly and prudently in refusing to approve distribution of the survey.

WHEREFORE, I respectfully request that plaintiffs' application for relief be denied.

Florence Halpern, Ph.D.

Sworn to before me this
day of November, 1976.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and by
his father, GILBERT M. TRACHTMAN,

Plaintiffs,

-against-

IRVING ANKER, individually and in his
capacity as Chancellor of New York City
Public Schools, SANFORD GELERENTER, indi-
vidually and as Administrator of Student
Affairs, Office of Student Affairs, Office
of High Schools, Board of Education of the
City of New York; GASPAR FABRICANTE, indi-
vidually and as Principal of Stuyvesant
High School and JAMES REGAN, ISAIAM
ROBINSON, STEPHAN AIELLO, AMELIA ASHE,
JOSEPH BARKAN, and ROBERT CHRISTEN,
constituting THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Defendants.

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: AFFIDAVIT IN
: OPPOSITION TO
: PLAINTIFFS'
: APPLICATION FOR
: DECLARATORY AND
: INJUNCTIVE
: RELIEF

: 76 Civ. 3845
: (CBM)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AARON H. ESMAN, M.D., being duly sworn, deposes
and says:

1. I am presently the Chief Psychiatrist at the
Jewish Board of Guardians, an organization providing mental
health treatment services to emotionally disturbed children.
I am also the Director of Psychiatric Training at the
Madeleine Borg Child Guidance Institute, as well as an As-
sociate in Psychiatry at the Columbia University College of
Physicians and Surgeons, and an Associate Attending
Psychiatrist at Roosevelt Hospital. I also lecture in
psychiatry at the New York Psychoanalytic Institute and the

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Columbia University School of Social Work. I have written extensively concerning the mental health of children and attached hereto is a copy of my resume which I feel establishes me as an expert in the field of Child Psychiatry.

2. It is with this background that I have reviewed the questionnaire on sexual attitudes and behavior prepared as a "survey" project at Stuyvesant High School. It raises a number of serious problems that make it, I believe, inappropriate for such use.

3. Specifically, such questions as Nos. 15, 16, 18, 20 and 23 touch on areas of great sensitivity for young people in the age group under consideration. They are likely to arouse considerable anxiety and tension in a significant number of students, particularly those in the younger (12 to 14) age group who are in a state of developmental flux and for whom the issues raised by these questions are acute and unresolved.

4. I consider it highly inappropriate and provocative, for instance, to confront a child whose gender identity is uncertain with a bald question on his "feelings about homosexuality." Similarly, it seems to me inappropriate to ask of a barely pubertal child that he detail "the extent of his sexual experience." In some cases, confrontation of this sort might well lead to serious emotional difficulties.

5. This "survey" is, in fact, a melange of poorly considered questions regarding a variety of levels of sexual attitudes and conduct. It reflects serious problems and confusion as to method and conceptualization.

6. I think it might be possible to devise a valid study of sexual beliefs and attitudes in such a

population, but to interlard such questions with others on "experience" and behavior not only leads inevitably to contamination of the data, but can engender highly undesirable psychological consequences in the subjects.

7. It is my view that this "survey" is poorly designed, unlikely to yield valid, verifiable or useful information and is potentially dangerous to the group for whom it was intended.

WHEREFORE, I respectfully submit that plaintiffs' application for relief should be in all respects denied.

S/
AARON H. ESTEY, M.D.

Sworn to before me this

17th day of November, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, Individually and by
his father, GILBERT M. TRACHTMAN,

Plaintiffs,

-against-

IRVING ANKER, individually and in his
capacity as Chancellor of New York City
Public Schools, SANFORD GELERTER, indi-
vidually and as Administrator of Student
Affairs, Office of Student Affairs, Office
of High Schools, Board of Education of the
City of New York; GASPAR FABRICANTE, indi-
vidually and as Principal of Stuyvesant
High School and JAMES REGAN, ISAIAH
ROBINSON, STEPHAN AIELLO, AMELIA ASHE,
JOSEPH BARKAN, and ROBERT CHRISTEN,
constituting THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Defendants.

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: PLAINTIFFS'
: APPLICATION FOR
: DECLARATORY AND
: INJUNCTIVE
: RELIEF

: 76 Civ. 3845
: (CBM)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

VERA S. PASTER, being duly sworn, deposes and
says:

1. I submit this affidavit to supplement my prior
statements regarding the potential harm of the survey on
"Sexuality in Stuyvesant". Attached hereto as Exhibit "A"
is a copy of my prior affidavit and, attached as Exhibit "B",
is a copy of my resume which I believe will establish my ex-
pertise in this area.

2. This questionnaire is being weighed from the
point of view of its marginal value in actually eliciting
with any degree of validity or reliability the attitudes it
seeks to explore. The questionnaire is unsophisticated in

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construction and in wording, and the method of random distribution is completely inadequate for generalization of any of the findings. The potential harm it may do to even a minority of students is in no way, therefore, offset by the value of any information that it could elicit. From this point of view the risks are unjustified.

3. The essential difficulties are in three areas: the raising of issues in such a way as to require a commitment to an attitude and a prediction of a behavior; the failure to provide for exacerbation of anxiety and stress about sexuality, resulting from involvement in the questionnaire; the failure to provide for informed consent according to professional and legal requirements.

4. Forced identification to sexual and other roles. Some of the questions force youngsters to commit themselves to such controversial and potentially guilt producing identifications as being a hertero-homo-or bi-sexual, as being able to have an abortion, as not getting along with their rents, etc. Such commitments are destructive for youngsters at this age. There may be considerable experimentation during these early adolescent years. It is a mistake for the adolescent or for those around the adolescent to solidify such explorations. Checking a response that says "I am a _____" leads to thinking that "I am a _____". What might be a passing phase is helped to be an entrenched identification.

A. Adolescents who attend Stuyvesant High School are brighter and intellectually more sophisticated on the whole. Their intellectual precocity is often superior to their emotional development. As a matter of

fact, many of these students are relatively immature socially and emotionally. They are younger in age and have emphasized the world of knowledge and ideas. This tends to push some of them towards a more sophisticated intellectual point of view about many issues than they can sustain emotionally. For example, they may like to think of themselves as emancipated from the attitudes of their parents. At the same time, however, they may be very dependent on parental approval, and bound by the attitudes of right and wrong that they grew up with. Some may commit themselves on the questionnaire to what seems to them sophisticated responses - "I would have an abortion." These same students might then experience anxiety and guilt about this symbolic betrayal.

D. Adolescents at this state are coping with considerable sexual curiosity, concerns about their own sexual adequacy, guilt and confusion about their changing sexual needs, and other struggles necessary for the transition into adult sexuality. This is complicated by their need to challenge adult authority and establish their own sense of competence and independence. These issues make students at this stage more vulnerable to random surveys of this type. Those least emotionally able to deal with the questionnaire issues may be the very ones who most eagerly submit to them. Thus we cannot depend on the adolescent to protect himself from the potential problems that would ensue in this area. This is notwithstanding the fact that some youngsters would refuse to take the questionnaire for self-protective reason. Some will expressly because of their tension and anxiety be attracted.

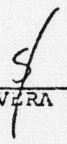
5. The items that are particularly objectionable in this context are questions 13, 15, 19, 20, 23, 24, and 25.

6. Help with anxiety reactions. For many years, the Board of Education has sponsored a comprehensive program of sex education. In Stuyvesant High School not only is curriculum in sex education followed but also the Board has supported a student-run peer counseling group in sex education. This would indicate the acceptance by the Board of its responsibility to deal directly with this area with students. The problem with this questionnaire then, is not so much what is dealt with but how it is dealt with. Teachers, and peer counseling leaders, have been carefully trained to recognize when students are troubled. They then provide for supports and appropriate follow-up. The most troubled may not reach out for help. The random distribution of questionnaires to be submitted anonymously can in no way provide for backup support or protection for any student who has to cope with increased conflict as a result of this exposure, no matter how serious the particular student's trauma may be. The Board of Education, therefore, is exercising only reasonable prudence and care in seeking to prevent such a situation from occurring.

7. Informed consent. HEW guidelines require collectors of information from human subjects to inform those subjects fully. The students who participate in this questionnaire would have to be informed that they might become somewhat anxious and up set as a result of participating in the study. The spirit of this regulation would also indicate that the parents of these students should also be informed about the questionnaire and about possible reactions to it.

8. For all these reasons, I would believe that the questionnaire as it now reads should not be distributed.

WHEREFORE, plaintiffs' application for relief should be denied.



VERA S. PASTER, Ph.D.

Sworn to before me this
17th day of November, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

Plaintiff,

- against -

IRVING ANKER, et. al.,

Defendants.

76 Civ. 3845

SUPPLEMENTARY
AFFIDAVIT IN SUPPORT
OF PLAINTIFF'S APPLI-
CATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

GILBERT M. TRACHTMAN, being duly sworn, deposes and says:

1. I am one of the plaintiffs in this action, being the father of the minor plaintiff, JEFF TRACHTMAN. I am professionally a psychologist and my qualifications have been set forth in the prior affidavit submitted by me in support of the plaintiff's application. I submit this affidavit in response and in opposition to assertions advanced in the defendants' submissions in opposition.

Vera S. Paster - Supplementary Affidavit

2. Dr. Paster concludes that the proposed method of random distribution of the questionnaire is inadequate for generalization of the findings obtained from responses to the questionnaire. (p.2, Paster Affidavit, 11/17/76). This speaks to projected use of the data and not to the rights of students to collect the data. Actually the proposed methodology for random

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distribution of the questionnaire may be deemed to be fairly sophisticated in that it parallels procedures followed in much of the survey research appearing in professional literature. Generalization of the findings would be limited not by the sampling technique per se, but by inability to determine the representativeness of the responding group. Since response or non-response would be voluntary and anonymous, it would be difficult to generalize beyond the sample obtained. This much is true of much published research and is a constraint which must be recognized in drawing conclusions from the data.

3. Dr. Paster suggests that certain questions require a commitment to an attitude and a prediction of behavior and that such commitments are destructive at the age of the Stuyvesant population (id. p. 2). It is submitted that there is no evidence that the expression of a current attitude or preference binds one to that attitude, no evidence that future behavior will be bound by currently expressed attitudes, and no evidence of the destructiveness of such momentary commitments.

4. It is stated that Stuyvesant students, while "brighter and more sophisticated intellectually"... "their intellectual precocity is often superior to their emotional development

...", and that many of the students are "...relatively immature socially and emotionally...". This is pure conjecture, is supported by no data or evidence, and is directly contrary to more generally accepted perceptions of intellectually gifted youngsters as being similarly advanced in social and emotional development.

"When it comes to the personalities of these children (the gifted) some amazing things were revealed... They had more wholesome social attitudes and were emotionally more healthy than their classmates." Witty, Helping the Gifted Child, Science Research Associates, Chicago, Ill., 14.

"Children of IQ 140 or higher are, in general, appreciably superior to unselected children in physique, health and social adjustments; markedly superior in moral attitudes as measured either by character tests or by trait ratings..." Terman, cited by Watson, Psychology of the Child, John Wiley & Sons, N.Y., 514.

"In comparison with children in general, intellectually gifted children often give evidence of the following emotional characteristics: 1. Greater degree of social adjustment, 2. superior mental health, 3. greater maturity in character development, 4. more self reliance. Metropolitan School Study Council, How to Educate the Gifted Child, 4

"They (gifted children) had more wholesome social attitudes and were emotionally more healthy than their classmates. In short, they were better-all-around subjects and when they differed from the population, these differences were usually desirable ones." Witty, Helping the Gifted Child, Science Research Associates, Chicago, 15.

5. Dr. Paster expresses further concern that those students "least emotionally able to deal with the questionnaire issues may be the very ones who most eagerly submit to them" and that we cannot depend on the adolescent to protect himself (id., p.3). This is contrary to all of our understanding of personality structure and the organization of defensive systems. Adolescents who are coping with sexual concerns are constantly surrounded by sexual stimuli and develop characteristic modes of coping with these and other anxiety arousing stimuli. It is more likely that youngsters responding to the survey are doing so either out of healthy interest or curiosity, or because the survey is meeting some need for further explanation or information. Youngsters unable to deal with the issues involved are most likely to avoid dealing with them. It would appear that the defendants imbue the questionnaire proposed with some arcane and hypnotic power to lure students to their doom, however defendants offer no support for this view.

6. Dr. Paster expresses further concern that no provision is made for helping students who must cope with increased conflict as a result of exposure to the survey (id., p.4). Since it is precisely the position of the plaintiffs that the questionnaire will not elicit such trauma and that defendants have not,

final sexual attitude is not decided until after puberty".

(S. Freud, Three Essays on the Theory of Sexuality, Standard Edition, Hogarth Press, London, 7:146). However, Dr. Esman offers no evidence that a questionnaire containing items relating to a student's unresolved sexual conflicts can in any way lead to serious emotional difficulties. It is more likely to be an area of particular interest to most students looking to resolve these developmental conflicts.

9. Dr. Esman advances further criticism relating to the "interlarding" of questions regarding sexual beliefs and attitudes with other questions about experience or behavior. He offers no reason and makes no case for objecting to this, except for the perjorative use of terms like "contamination". That different people might design a questionnaire in different ways is clear, however, the issue before this Court is not one of the design of the survey, but whether its proponents have a right to distribute it within Stuyvesant High School and to publish the results. The complaint of "interlarding" of questions does not speak to the claimed harmful consequences of the questionnaire nor is any evidentiary support advanced to substantiate the harm Dr. Esman perceives.

General Comments

10. The intuitive and undocumented apprehensions of

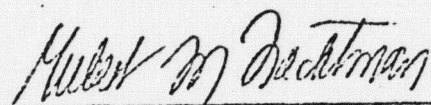
Drs. Paster and Esman may lead to similar conclusions but the unreliability of the data from which they purport to reach these conclusions should be noted. For instance, between them they cite nine items in the proposed questionnaire as being dangerous (Nos. 13, 15, 16, 18, 19, 20, 23, 24, and 25) but are able to agree, in their independent citations, on only three of these items (15, 20 and 23).

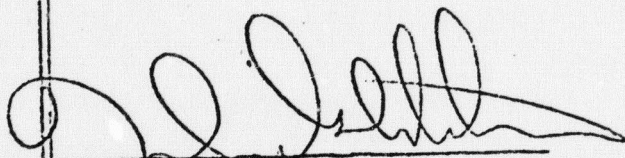
11. Several affidavits submitted by the defendants in opposition refer to the Handbook for Research Applicants and cite standards to be used in evaluating formal research proposals to be conducted in the New York City schools. It is submitted that these criteria are irrelevant and inappropriate under the circumstances in question in this proceeding. Formal research proposals must be held to formal research standards. Hypotheses are tested, results are disseminated to the scientific and professional community, the intent being to add to a body of formal knowledge. Informal studies conducted in informal circumstances -- for example, student polls on political preferences or a referendum on air pollution policy or an opinion poll to predict Academy Award winners -- are conducted without adult (professional) interference without concern about sampling procedures, generalization of results, etc. The projected questionnaire is also an informal survey, for preparation of a local feature story. No hypotheses are projected, there

is no plan to submit the findings to a professional journal or to generalize findings into a body of new knowledge, and the use of professional research standards in this matter is a diversion.

12. The only relevant issue here is whether students in a municipal high school have the right to propound, distribute anonymously and request voluntary participation in the completion of a questionnaire relating to sexual attitudes of fellow students. Plaintiffs urge upon the Court the existence of such a right and request the grant of the relief sought in their application.

Sworn to before me this
28 day of Nov 1976


GILBERT M. TRACHTMAN


Notary Public

MELVIN GOLDSTEIN
Notary Public, State of New York
No. 80-1494800
Qualified in Nassau County
Term Expires March 30, 1977

NOTICE OF ENTRY

ir:-Please take notice that the within is a (certified)
true copy of a
uly entered in the office of the clerk of the within
amed court on 19

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

77 Broadway New York, N. Y. 10013
(212) WAlker 5-7421

o

Attorney(s) for

NOTICE OF SETTLEMENT

ir:-Please take notice that an order

f which the within is a true copy will be presented
or settlement to the Hon.

ne of the judges of the within named Court, at

n the day of 19
M.

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

77 Broadway New York, N. Y. 10013
(212) WAlker 5-7421

o

Attorney(s) for

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Index No. 76 Civ. 3845

Year 1976

U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF N.Y.

JEFF TRACHTMAN, et. al.,

Plaintiff,

- against -

IRVING ANKER, et. al.,

Defendants.

SUPPLEMENTARY AFFIDAVIT IN
SUPPORT OF PLAINTIFF'S
APPLICATION.

BERGER, KRAMER & LEVENSON

Attorneys for Plaintiff

Office and Post Office Address, Telephone

377 Broadway New York, N. Y. 10013
(212) WAlker 5-7421

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, etc.,

76 Civ. 3845

Plaintiffs,

SUPPLEMENTARY AFFIDAVIT
IN SUPPORT OF
APPLICATION

- against -

IRVING ANKER, et. al.,

Defendants.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MARTIN M. BERGER, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs in this action and make this affidavit in support of the plaintiffs' application for a declaratory judgment and an order granting preliminary and permanent injunction, in response to statements made by defendants in opposition.

2. Adversion had been made in the affidavit of Sanford Gelernter (Sworn to Nov. 16, 1976) to a survey proposed to be conducted orally, questions to be asked and a letter of transmittal being appended to Mr. Gelernter's affidavit as Exhibits A and B. Mr. Gelernter's affidavit goes on to comment on the reasons that he refused permission to conduct that survey. To clear the record,

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the references in Mr. Gelernter's affidavit to the oral survey are not at issue in this proceeding.

3. The determination of the Board of Education sought to be reviewed in this action involves the questionnaire and the cover letter appended to plaintiffs' motion papers, specifically to deponent's affidavit sworn to September 9, 1976, upon which the Order to Show Cause in this matter was based. That questionnaire was the one submitted to Irving Anker as Chancellor, and which the Board of Education reviewed, and which by its February 24, 1976, decision (appended to Berger Affidavit of September 9 as Exhibit G) prohibited distribution at Stuyvesant High School.

4. The original submission to Mr. Gelernter proposing oral interviews was soon abandoned by the student proposing it upon advice of Stuyvesant High School faculty members including the then faculty member assigned as Coordinator of Student Affairs. The coordinator was advised of the change in the format of the proposed survey to that now before the Court and confirmed to the interested students that the coordinator, a Mr. Donald Sussman, advised Mr. Gelernter of the change.

5. In any event, the change occurred because the student concluded that the anonymity that would be desirable could not be preserved in an oral interview survey, and shortly after the initial

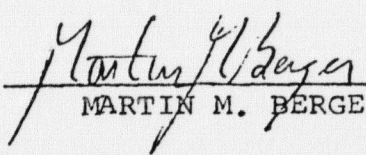
submission prepared and submitted to Mr. Anker the survey questionnaire now at issue.

6. It is difficult to understand the defendant's need to cloud the issue with references to an abandoned proposal. The survey questionnaire here at issue is the one dealt with by the Board of Education and its determination is the one sought to be reviewed.

7. Appended hereto is a statement of Dr. Adam Munz, Chief Psychologist at the St. Luke's Hospital Center. Dr. Munz has examined the affidavits submitted in opposition by the defendants and his statement sets forth his view of the issues in contention. It is not in formal affidavit format, for the reason that time pressures prevented his signing of such a formal affidavit. The statement, however, is attested to by a notary public and plaintiffs' request that it be read in support of their application.

8. Under all of the circumstances the relief requested by this application should be granted.

Sworn to before me this
29th day of November, 1976


MARTIN M. BERGER


Notary Public

LILLIAN M. BERGER
Notary Public, State of New York
Qualified in Kings County
My Commission Expires March 30, 1977

ADAM MUNZ, PH.D.
Diplomate in Clinical Psychology, A.B.P.P.
ST. LUKE'S HOSPITAL CENTER
AMSTERDAM AVENUE AND 115TH STREET
NEW YORK, NEW YORK 10025
TELEPHONE 870-8337

November 20, 1976

To whom it may concern:

I am presently the Chief Psychologist at the St. Luke's Hospital Center and Consultant to the Attending Staff there. I am also Assistant Professor of Clinical Psychiatry (Psychology) at Columbia University and Consultant to the Columbia University Health Service (where I am actively engaged in working with students). I am also a consultant to the Cathedral School of St. John the Divine. I have been awarded a Certificate in Psychoanalysis by the William Alanson White Institute of Psychiatry, Psychoanalysis and Psychology, and I am on the Teaching Staff of the Institute. I supervise a large number of clinical psychologists as well as psychiatric residents and I am a Diplomate of the American Board of Professional Psychology of the American Psychological Association (Clinical).

I have had the opportunity to peruse the material presented in connection with the "Sexuality in Stuyvesant" questionnaire, including the questionnaire itself and the various affidavits submitted by all concerned in connection with said questionnaire.

I would like to state, by way of a summary of my opinion in this matter, that in the more than 25 years of active experience as a clinical psychologist I have never encountered a situation in which a child, adolescent or adult has been adversely affected by a questionnaire! - the statement that "in some cases confrontation of this sort might lead to serious emotional difficulties" is totally unfounded and speculative.

The realities of life, the rawness of the world around us to which these youngsters are exposed daily on their way to and from school, are undoubtedly far more eroding of their development than a questionnaire could ever be.

I found myself disagreeing with Drs. Esman, Paster and Cohen, as well as with Mr. Polemeni, and feel that their concerns are over-determined and unwarranted - there are many other and far more noxious influences on our children that we should concern ourselves with rather than the questionnaire in point.

State of New York
County of New York

Sworn to before me this 22nd day of
Nov. 1976.

Lydia A. Gattis

LYDIA A. GATTIS
NOTARY PUBLIC, State of New York
No. 31-64/1720
Qualified in New York County
Term Expires March 30, 1978

Adam Munz, Ph.D.

Adam Munz Ph.D.

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NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

377 Broadway

New York, N. Y. 10013

(212) Walker 5-7421

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

BERGER, KRAMER & LEVENSON

Attorneys for

Office and Post Office Address, Telephone

377 Broadway

New York, N. Y. 10013

(212) Walker 5-7421

To

Attorney(s) for

Index No. 76 Civ. 3845

Year 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

JEFF TRACHTMAN, etc.,

Plaintiffs,

- against -

IRVING ANKER, et. al.,

Defendants.

SUPPLEMENTARY AFFIDAVIT

BERGER, KRAMER & LEVENSON

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

377 Broadway

New York, N. Y. 10013

(212) Walker 5-7421

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFF TRACHTMAN, et. al.,

Plaintiff,

- against -

IRVING ANKER, et. al.,

Defendants.

76 Civ. 3845

(CBM)

REPLY AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD SIEGEL, being duly sworn, deposes and says:

1. I am Secretary to the Board of Education of the City of New York and as such am familiar with the facts and circumstances of this action. I have read the affidavits of plaintiff witnesses and submit this affidavit in response thereto.

2. It should be noted that none of the affidavits respond to the problem of maintaining confidentiality. They seem to assume the anonymity will be maintained merely because the questionnaire will not be signed. Obviously if the results are to be tabulated by students there will be many opportunities to violate confidentiality.

3. A reading of the affidavit of plaintiff Dr. Gilbert Trachtman brings into question the basic theory of his action. Gone are the references to First Amendment and student rights as well as to censorship. The survey now takes on the aspect of a therapeutic instrument designed to help students overcome their sexual problems. This is evidenced by the phraseology used by Dr. Trachtman. "The article...may well serve in reducing fantasy and distortion and relieving anxiety." (5) (number in parenthesis refer to paragraph in the expert affidavit)

4. Plaintiffs' expert affidavits bear out the concern

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of the defendants in that a highly charged questionnaire randomly distributed to an undifferentiated population in the subject age group could have harmful consequences to some children. Defendants' expert affidavits clearly support this position as do the affidavits of two of plaintiffs' experts. Plaintiff Dr. Trachtman, in his affidavit, states that "[s]ome students may be expected to be conflicted or troubled by sexual matters such as are touched on by this survey." (10) Dr. Harry Gilbert in his affidavit agrees that "[t]he danger that some students might be exposed to anxiety arousal exists." (5)

5. Dr. Gilbert's statement that "any possible anxiety could be handled by guidance personnel" (4) ignores the fact that trained guidance personnel are in no way involved with the distribution of the survey. (See affidavit Dr. Paster, #6)

6. Strangely, while two of plaintiffs' experts agree with defendants that the survey and subject matter are troubling and anxiety ridden for at least some students, Dr. Victor Elkin finds the questions "actually benign". (3)

7. Dr. Max Siegel defends the questionnaire because it can provide "contexts for discussion in areas of sexuality". (2) He is apparently unaware of the Family Life and Sex Education programs which exist in the New York City schools where such discussion takes place under the guidance of trained leadership.

8. Dr. Trachtman suggests that the pupil who would be troubled by the questionnaire can avoid the trouble by ignoring it. This position is entirely without merit, as the decision to ignore the survey can only be made after the pupil has read it; and as defendants' affidavits have made clear the harm arises at just that point. The pupils are not given an opportunity to consent to the invasion of their privacy; only the opportunity to refuse to consent by returning a blank questionnaire. The pupil is placed at risk when he confronts the question and must decide whether to answer it. (See affidavit of Dr. Paster #4B)

9. A careful reading of both the Trachtman and Gilbert affidavits makes it clear that neither affiant is willing or able to state flatly that there is no risk to some pupils.

10. The Board of Education has a responsibility to prevent the use of school facilities in a way that might be harmful to pupils, even to a minority. The Board does not believe that it, and certainly not the plaintiffs, can accept the responsibility for placing at risk a number of children who may be counted in tens or in scores, merely to satisfy the curiosity of the editors of a school paper. What is the legal liability to the Board if such "anxiety arousal" were the proximate cause of harm to one pupil?

11. Dr. Trachtman refers to "the projected survey and ensuing article" at paragraph "13" of his affidavit. While it is important to note that there was no article ever presented to the defendants this statement substantiates the Board's position that the survey is in reality a research proposal. The decision of defendants rested in part on the requirement that research and surveys conducted in schools meet published rules and regulations (see affidavit of Dr. Polemeni submitted by defendants). Students do not gain greater rights than others upon entering school. They are expected to adhere to uniform rules applicable to others in similar circumstances. Plaintiffs have not dealt with this issue.

12. A questionnaire distributed in school under the auspices of the editors of the school paper has the aura of the imprimatur of the school. There is no way to avoid this. Indeed it must be assumed that plaintiffs intended this otherwise a random questionnaire could have been distributed at the schoolhouse corner.

13. The questionnaire asks the subjects to describe

their relationship to their parents. Such questions can precipitate severe loyalty conflicts in young pupils and constitute invasions of privacy of both the pupils and their parents. (See affidavit of Dr. Halpern, par. 8)

14. When the danger of disruption or harmful consequences to pupils exists the school is obligated to act. The affidavits of plaintiffs' experts do not refute defendants claim of potential harm but in fact strengthens it. Two of plaintiffs experts admit that harm may arise. I submit that based upon the record herein the obligation of defendants to prevent distribution of the survey is clearly evidenced and that determination should not be upset by this court.


Harold Siegel

Sworn to before me on
this ^{29th} 29 day of November,
1976.

JULIUS KAPLAN
Commissioner of Deeds
City of New York 2-1750
Certificate filed in Kings County
Commission Expires May 1, 1977

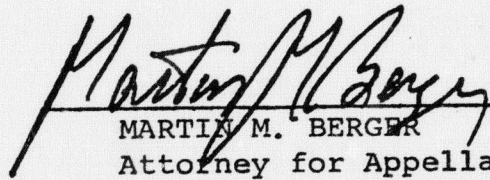


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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served a copy of the foregoing Appendix upon the counsel of record for Appellees at their office address, Municipal Building, New York, N.Y. 10007, by personal service.

This 28th day of February, 1977.


MARTIN M. BERGER
Attorney for Appellants